

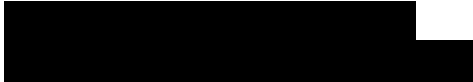
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2401076
Decision Date:	4/18/2024	Hearing Date:	02/23/2024
Hearing Officer:	Scott Bernard		

Appearances for Appellant:



Appearance for MassHealth:

Robin Brown OTR/L via video conference



*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:	Personal Care Attendant/Termination of Services
Decision Date:	4/18/2024	Hearing Date:	02/23/2024
MassHealth's Rep.:	Robin Brown OTR/L	Appellant's Reps.:	[REDACTED]
Hearing Location:	Quincy Harbor South	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 26, 2023, MassHealth notified the appellant that at the request of the PCM agency, it would terminate her PCA services on January 8, 2024. (See 130 CMR 450.303; Exhibit (Ex.) 1; Ex. 5, pp. 3-5). The appellant filed this appeal in a timely manner on January 22, 2024. (See 130 CMR 610.015(B) and Ex. 2). Any MassHealth action to suspend, reduce, terminate, or restrict a member's assistance services is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth terminated the appellant's PCA services at the request of the PCM agency.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 450.303, in terminating the appellant's PCA services.

Summary of Evidence

MassHealth was represented by a clinical appeals reviewer who is a registered occupational therapist. The appellant represented herself and was accompanied by a case coordinator from a social services agency who also testified. All witnesses attended the hearing by video conference.

The MassHealth representative testified to the following. According to the documentation submitted to MassHealth, the appellant is over the age of [REDACTED] with primary diagnoses of asthma, diabetes, sleep apnea, neuropathy from lumbar disc disease, hip difficulties, including tears in each hip, arthritis in the knees, hands and carpal tunnel syndrome. (Testimony; Ex. 5, pp. 12-13). On November 30, 2023, Tempus (the PCM agency) submitted a request to terminate the appellant's PCA services to MassHealth. (Testimony). Based on the documentation that the PCM agency submitted, included in MassHealth's hearing submission, MassHealth processed the request on December 26, 2023 and issued the notice under appeal. (Testimony; Ex. 1; Ex. 5, pp. 3-5). The notice informed the appellant that her PCA services would end on January 8, 2024. (*Id.*). The MassHealth representative emphasized that MassHealth only terminated the appellant's PCA services because the PCM agency informed MassHealth that the appellant did not require those services.

The MassHealth representative further testified that according to the information available to her, and indicated in the notice under appeal, the appellant has been receiving PCA services for quite some time. (Testimony). Most recently, as of October 19, 2023, the appellant had been receiving 45 hours and 15 minutes of PCA services. (Testimony; Ex. 1; Ex. 5, pp. 3-5).

In the November 30, 2023 submission, the PCM agency's evaluator, who was a registered nurse, marked all ADLs and IADLs as zero. (Testimony; Ex. 5, pp. 6, 13-28). The MassHealth representative read some of the documentation the PCM agency into the record. (Testimony). Regarding mobility, the PCM agency's evaluator wrote:

I[ndependent]¹ walking up a flight of stairs. [The appellant] was not home when we got there and a woman)² later identified as the PCA) let myself and [REDACTED] in. Woman stated that consumer was driving chidden [sic] to school and" had forgot " about appt. Consumer came in about 20 min late, walking with cane. I[ndependent] sat on counter height stool. I[ndependent] on and off step stool onto very high bed. she crawled in over the end of the bed on all fours.,³ and laid down on the bed. She states [s]he would like to get a new bed. No signs of pain observed with movement today[.] (Ex. 5, p. 14).

¹ The MassHealth representative explained that people in the medical profession will frequently use a capital "I" to mean "independent".

² Shown exactly as in the original.

³ Shown exactly as in the original.

Regarding bathing, the evaluator commented:

[Member] states her shower seat is in the basement d/t one of the legs is broken she report her CM [name of the case coordinator] from [agency]⁴ is working on getting her a new one. she [sic] reports her pca [sic] is assisting her in and out and washing her L[ower] B[ody]. I explained I would call her CM as she would be totally independent with a trans tub bench. consumer provided [telephone number] as the number to reach her CM . I called at 218pm .⁵ and spoke with erica . . that number was for [another agency] and there is no one named [case coordinator's name] there. This consumer may benefit from equipment but from what I observed today, she has the functional ability to do this task. (Ex. 5, p. 16; Testimony).

Regarding grooming, the evaluator wrote "consumer has the functional ability to groom. podiatry for toenails d/t diabetes[.]" (Id.). The MassHealth representative stated that the ability to cut toenails is the standard of care since a person with diabetes can significantly injure themselves if they are not able to cut their toenails, which could result in infection and possibly amputation. (Testimony). For dressing and undressing the evaluator commented "consumer has the functional ability to dress and undress. I observed her get up on step stool, crawl on all four extremities and position herself on the bed. I saw her reach her head and bend forward." (Testimony; Ex. 5, p. 18). Regarding eating, the evaluator commented that the appellant is "[i]ndependent [for] eating." (Ex. 5, p. 19). For toileting, commentator wrote that the appellant was "[i]ndependent[t] toileting . she states she uses incont pads and she manages this independently[.]" (Testimony; Ex. 5, p. 20). Evaluator wrote that the appellant is "[i]ndependent [with] meds[.] [S]he know[s] and takes". (Testimony; Ex. 5, p. 21). For other healthcare needs, meal preparation, and laundry, the evaluator made no comments. (Testimony; Ex. 5, pp. 22-24). MassHealth therefore terminated the appellant's PCA services based on the PCM agency's requesting no time for any ADLs or IADLs.

The appellant testified to the following. The appellant disputed a number of the evaluator's comments. (Testimony). The evaluator never asked the appellant to get into any bed at all. (Testimony). The evaluator did ask the appellant to come into the bathroom, and the appellant told the evaluator that her shower chair was broken and was therefore not in the shower. (Testimony). The appellant also informed the evaluator that she was in the process of trying to obtain a new one. (Testimony). The appellant disagreed with the evaluator regarding her independence with dressing and undressing. (Testimony). The appellant was able to dress and undress herself from the waist up but needed assistance with dressing and undressing her lower body. (Testimony).

The appellant had been with the PCM agency for years and never had a problem with prior reevaluations. (Testimony). The appellant acknowledged that she was late to the evaluation.

⁴ The case coordinator testified that the agency the evaluator named was not the agency for which he worked.

⁵ Shown exactly as in the original.

(Testimony). The appellant explained that she has custody of her grandson and she had to take him to his school that day. (Testimony). Normally the appellant's grandson is taken to school by another person, but that person was not available that day. (Testimony). Because of this unexpected task and her mobility issues, it took the appellant longer than it would take others to take her grandson to school. (Testimony). The appellant did try calling the evaluator to inform her that she was running late but was not able to reach her. (Testimony). Once the appellant did get back to her home, the evaluator was upset. (Testimony). Despite her explanation, the evaluator seemed to maintain a nasty attitude towards the appellant. (Testimony). This did not sit right with the appellant. (Testimony). The evaluator informed the appellant that she was running behind on her other evaluations and the appellant's lateness did not make things easier. (Testimony).

The case coordinator testified to the following. According to his organization's records, no one ever attempted to contact him on the date of the evaluation. (Testimony). The case coordinator did not work for the organization the evaluator named in the PCM agency's submission and that he was not the appellant's "case manager" but a case coordinator. (Testimony). The case coordinator confirmed that he and the appellant were working with the appellant's doctor to obtain a new shower chair from MassHealth. (Testimony). The case coordinator confirmed that the appellant continues to have a medical need for PCA services. (Testimony).

The MassHealth representative for her part stated that she believed the appellant's testimony. She stated that prior to the hearing she did not quite know what to do with this case since the request for termination of services did not originate with MassHealth but with the PCM agency. The MassHealth representative did encourage the appellant to reapply for PCA services, perhaps through a different the PCM agency.

Findings of Fact

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

1. According to the documentation submitted to MassHealth, the appellant is over the age of [REDACTED] with primary diagnoses of asthma, diabetes, sleep apnea, neuropathy from lumbar disc disease, hip difficulties, including tears in each hip, arthritis in the knees, hands and carpal tunnel syndrome. (Testimony; Ex. 5, pp. 12-13).
2. On November 30, 2023, the PCM agency submitted a request to terminate the appellant's PCA services to MassHealth. (Testimony).
3. In the November 30, 2023 submission, the PCM agency's evaluator, a registered nurse marked PCA assistance time for all ADLs and IADLs as zero. (Testimony; Ex. 5, pp. 13-28).
4. Regarding mobility, the PCM agency's evaluator wrote:

I[ndependent]⁶ walking up a flight of stairs. [The appellant] was not home when we got there and a woman) later identified as the PCA) let myself and [REDACTED] in. Woman stated that consumer was driving chidden [sic] to school and" had forgot " about appt. Consumer came in about 20 min late, walking with cane. I[ndependent] sat on counter height stool. I[ndependent] on and off step stool onto very high bed. she crawled in over the end of the bed on all fours., and laid down on the bed. She states he would like to get a new bed. No signs of pain observed with movement today[.] (Ex. 5, p. 14).

5. Regarding bathing, the evaluator commented:

[Member] states her shower seat is in the basement d/t one of the legs is broken she report her CM [named of the case coordinator] from [agency] is working on getting her a new one. she [sic] reports her pca [sic] is assisting her in and out and washing her L[ower] B[ody]. I explained I would call her CM as she would be totally independent with a trans tub bench. consumer provided [telephone number] as the number to reach her CM . I called at 218pm . and spoke with erica . . that number was for [another agency] and there is no one named [case coordinator's name] there. This consumer may benefit from equipment but from what I observed today, she has the functional ability to do this task. (Ex. 5, p. 16; Testimony).

6. Regarding grooming, the evaluator wrote "consumer has the functional ability to groom. podiatry for toenails d/t diabetes[.]" (Id.).

7. The ability to cut toenails is the standard of care since a person with diabetes can significantly injure themselves if they are not able to cut their toenails, which could result in infection and possibly amputation. (Testimony).

8. For dressing and the evaluator commented "consumer has the functional ability to dress and undress. I observed her get up on step stool, crawl on all four extremities and position herself on the bed. I saw her reach her head and bend forward." (Testimony; Ex. 5, p. 18).

9. Regarding eating, the evaluator commented that the appellant is "I[ndependent] [for] eating." (Ex. 5, p. 19).

10. For toileting, commentator wrote that the appellant was "I[ndependent]t toileting . she states she uses incont pads and she manages this independently[.]" (Testimony; Ex. 5, p. 20).

11. Evaluator wrote that the appellant is "I[ndependent] [with] meds[.] [S]he know[s] and

⁶ The MassHealth representative explained that people in the medical profession will frequently use a capital "I" to mean "independent".

takes". (Testimony; Ex. 5, p. 21).

12. For other healthcare needs, meal preparation, and laundry, the evaluator made no comments. (Testimony; Ex. 5, pp. 22-24).
13. MassHealth processed the PCM agency's request on December 26, 2023, and issued the notice under appeal, which informed the appellant that her PCA services would be terminating on January 8, 2024. (Testimony; Ex. 1; Ex. 5, pp. 3-5).
14. The appellant has been receiving PCA services from the PCM agency for quite some time and had been receiving 45 hours and 15 minutes of PCA services as of October 19, 2023. (Testimony; Ex. 1; Ex. 5, pp. 3-5).
15. The appellant acknowledged that she was late to the evaluation. (Testimony).
16. The appellant has custody of her grandson and she had to take him to his school on the day of the evaluation. (Testimony).
17. Normally the appellant's grandson is taken to school by another person, but that person was not available that day. (Testimony).
18. Because of this unexpected task and her mobility issues, it took the appellant longer than it would take others to take her grandson to school. (Testimony).
19. The appellant did try calling the evaluator to inform her that she was running late but was not able to reach her. (Testimony).
20. Once the appellant did get back to her home, the evaluator was upset. (Testimony).
21. Despite explanation the situation to the evaluator, the evaluator seemed to maintain a nasty attitude towards the appellant, which did not sit right with the appellant. (Testimony).
22. The evaluator informed the appellant that she was running behind on performing evaluations that day and the appellant's lateness did not make things easier. (Testimony).
23. The appellant disputed a number of the evaluator's comments. (Testimony).
24. The evaluator never asked the appellant to get into any bed at all. (Testimony).
25. The appellant told the evaluator that her shower chair was broken and was therefore not in the shower and that she was in the process of trying to obtain a new one with the help of the case coordinator. (Testimony).
26. The appellant stated that while she was able to dress and undress herself from the waist

up, she needed assistance with dressing and undressing her lower body. (Testimony).

Analysis and Conclusions of Law

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. (130 CMR 422.403(C)).

A reevaluation is an assessment of the member's continuing need for the PCA services provided to the member who requests a continuance of PCA services, because the current authorization is expiring. (130 CMR 422.402). 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. (130 CMR 422.422(D)). Reevaluations must be conducted annually, or more frequently when a significant change in the member's physical condition or living situation has occurred. (130 CMR 422.422(D)(1)). The reevaluation must accurately represent the member's need for physical assistance with ADLs and IADLs, and must consider the member's physical and cognitive condition and resulting functional limitations to determine ability to benefit from PCA services. (*Id.*). The reevaluation must take place in the member's presence and in the member's actual or proposed place of residence in the community. (130 CMR 422.422(C)(2) and (D)). The completed reevaluation must be reviewed, approved, and signed by the member, the member's legal guardian, the member's physician, nurse practitioner, or physician assistant, and the member's surrogate or administrative proxy, if appropriate. (130 CMR 422.422(C)(3)(a) and (D)).

A registered nurse from the PCM agency performed a reevaluation of the appellant's continued need for PCA services. The evaluation took place in the appellant's presence in her place of residence. As a result of the reevaluation, the PCM agency's nurse/evaluator determined that the appellant did not require physical assistance with any activities of daily living. Although the appellant testified that she did not agree with the PCM agency's reevaluation, there was no evidence submitted showing that she did not in some manner review, approve and sign the reevaluation. In any case, because the PCM agency indicated that the appellant did not require physical assistance with ADLs, MassHealth properly terminated the appellant's PCA services.

For the above stated reasons, the appeal 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.

Scott Bernard
Hearing Officer
Board of Hearings

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