

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part, Denied in part	Appeal Number:	2402784
Decision Date:	4/29/2024	Hearing Date:	03/29/2024
Hearing Officer:	Christine Therrien		

Appearances for Appellant:
Pro se



Appearance for MassHealth:
Robin Brown, OT (Optum)



*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:	PCA
Decision Date:	4/29/2024	Hearing Date:	03/29/2024
MassHealth's Rep.:	Robin Brown, OT	Appellant's Reps.:	Pro se, daughter
Hearing Location:	Quincy Harbor South - Telephonic		

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 12/29/23, MassHealth modified the appellant's prior authorization request for a personal care attendant (PCA). (130 CMR 422.410 and Exhibit 1). The appellant filed this appeal in a timely manner on 2/23/24. (130 CMR 610.015(B) and Exhibit 2). Modifications of a request for assistance are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The issue is whether MassHealth was correct, under 130 CMR 422.410, 422.412, and 450.204, in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative testified that a request for 34 hours and 45 minutes per week, was submitted by Life Path Inc. on 12/8/23. The MassHealth representative testified that the prior authorization (PA) for PCA services is applicable for dates of service beginning 12/29/2023 and ending 12/28/2024. The MassHealth representative testified that MassHealth authorized 19 hours and 15 minutes per week. The appellant is [REDACTED] with primary diagnoses of cancer, glaucoma, and neuropathy. The appellant lives with her daughter, adult granddaughter, and grandson-in-law. The MassHealth representative testified that modifications were made to the appellant's request for Activities of Daily Living (ADLs), which include medication administration during the night and other medical needs – flushing of her nephrostomy tube. The appellant agreed to the modifications for overnight medication administration of 3 minutes, 2 times per night, 3 days per week so this issue is **dismissed**.

The MassHealth representative testified the appellant requested 5 minutes, 2 times a day, 7 days a week for flushing the nephrostomy tube. MassHealth modified this request to zero because MassHealth considers this skilled care, which is outside the scope of the PCA program. The appellant agreed to the modification of zero minutes to flush the nephrostomy tube, so this issue is also **dismissed**.

The remaining modification is for housekeeping, which is an Instrumental Activity of Daily Living (IADL). The MassHealth representative testified the appellant requested 60 minutes per week for housekeeping. MassHealth modified the request to 45 minutes per week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs, who lives with multiple family members. The MassHealth representative testified that when a member lives with family, the PCA is allowed time for housekeeping to clean only the member's personal space, which includes their bedroom and bathroom.

The appellant testified that they have timed the length of time it takes for her to shower while her daughter stands outside to ensure her safety because she sits in a shower chair, then for her daughter to clean the bathroom, change the sheets, do the laundry, and dust. The appellant testified it takes longer than 45 minutes to do these tasks. The appellant's daughter testified that it takes much longer than 45 minutes per week to really clean the appellant's room.

Findings of Fact

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

1. A request for 34 hours and 45 minutes per week, was submitted by Life Path Inc. on 12/8/23.
2. The PA for PCA services is applicable for dates of service beginning 12/29/2023 and ending

12/28/2024.

3. MassHealth authorized 19 hours and 15 minutes of PCA services per week.
4. The appellant is [REDACTED] with primary diagnoses of cancer, glaucoma, and neuropathy.
5. The appellant lives with her daughter, adult granddaughter, and grandson-in-law.
6. Modifications were made to the appellant's request for ADLs, which include medication administration during the night and other medical needs – flushing of her nephrostomy tube.
7. The appellant agreed to the modifications for overnight medication administration, of 3 minutes of PCA assistance, 2 times per night, 3 days per week, so this issue is **dismissed**.
8. The appellant requested 5 minutes of PCA assistance, 2 times a day, 7 days a week for flushing the nephrostomy tube.
9. MassHealth modified this request to zero because MassHealth considers this skilled care which is outside the scope of the PCA program.
10. The appellant agreed to the modification of zero minutes to flush the nephrostomy tube, so this issue is also **dismissed**.
11. The remaining modification is for housekeeping which is an IADL.
12. The appellant requested 60 minutes per week for housekeeping.
13. MassHealth modified the request to 45 minutes per week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs who lives with multiple family members.
14. When a member lives with family the PCA is allowed time for housekeeping to clean only the member's personal space, which includes their bedroom and bathroom.

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 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.

(130 CMR 422.403(C)).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home. (130 CMR 422.401 *et seq.*). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA. (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLs). (130 CMR 422.410(A)).

120 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

- (A) Activities of Daily Living. 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.

(B) Instrumental Activities of Daily Living. 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 MassHealth agency as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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.

(emphasis added)

The requested services must also be medically necessary for prior authorization to be approved. (130 CMR 450.204). 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 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.

Regulations at 130 CMR 422.412 describe non-covered PCA services, as follows:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program. (130 CMR 422.412).

- (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; or¹**
- (G) surrogates, as defined in 130 CMR 422.402.
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

(emphasis added)

Per 130 CMR 503.007, MassHealth is the payer of last resort and only pays for health care and related services when no other source of payment is available, except as otherwise required by federal law.

- (A) Health Insurance. Every applicant and member must obtain and maintain available health insurance in accordance with 130 CMR 505.000: Health Care

¹ 130 CMR 422.402 Family Member - the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.

Reform: MassHealth: Coverage Types. Failure to do so may result in loss or denial of eligibility unless the applicant or member is

- (1) receiving MassHealth Standard or MassHealth CommonHealth; and
 - (2) younger than 21 years old or pregnant.
- (B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available
- (1) through the member's health-insurance, if any; or
 - (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.

MassHealth received a PA request for PCA services on the appellant's behalf from her PCM agency. The appellant is [REDACTED], and she lives with her daughter, adult granddaughter, and grandson-in-law. The appellant's primary diagnoses are cancer, glaucoma, and neuropathy. The appellant requested 60 minutes per week of PCA assistance with housekeeping. MassHealth modified the requests to 45 minutes per week. MassHealth modified this request because the appellant lives with family members and 130 CMR 422.410(C)(1) specifically states that when a member lives with family the family members will assist with IADLs such as housekeeping. For this reason, the MassHealth decision to authorize 45 minutes of PCA assistance for housekeeping per week was correct. The portion of 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.

Christine Therrien
Hearing Officer
Board of Hearings

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