

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2403133
Decision Date:	06/28/2024	Hearing Date:	4/3/2024
Hearing Officer:	Cynthia Kopka	Record Open to:	5/10/2024

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, R.N., 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:	Denied	Issue:	PCA services
Decision Date:	06/28/2024	Hearing Date:	4/3/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	██████
Hearing Location:	Quincy (remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated February 23, 2024, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on February 28, 2024. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032. Appellant was entitled to retain the prior level of services pending the outcome of the hearing. 130 CMR 610.036. The hearing record was held open through May 10, 2024 for the submission of additional evidence. Exhibits 5, 9.

Action Taken by MassHealth

MassHealth modified Appellant's request for prior approval of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and testified as follows. Appellant is in his [REDACTED] with diagnoses including fibromyalgia, autoimmune disease of multiple organ systems, cellulitis, and diabetes. He has impaired mobility secondary to degenerative joint disease in the neck and lumbar back, and arthritic pain with impaired strength in bilateral hands and knee. Exhibit 4 at 7-8. Appellant sustained a fall in [REDACTED], causing a fractured T-12 vertebra with nerve pain. *Id.* Appellant's mobility is compromised by neuropathy of feet with impaired strength and balance. He walks with a cane and contact assistance for ambulation especially on stairs, avoiding ambulation during difficult episodes. *Id.*

On February 22, 2024, Tri-Valley, Appellant's Personal Care Management Agency (PCMA), submitted a re-evaluation for PCA services, requesting 23.75 hours per week of PCA services on Appellant's behalf. On February 23, 2024, MassHealth modified Appellant's request and approved 19 PCA hours per week. The dates of service were from February 27, 2024 through February 26, 2025. Exhibit 1. Appellant was entitled to retain his prior level of services pending the outcome of the hearing.

MassHealth modified the requested PCA hours for one activity of daily living (ADL): passive range of motion (PROM). Appellant requested 10 minutes, 1 time per day, 7 days a week for each of the four extremities. Exhibit 4 at 13. MassHealth denied this request. Appellant's PCMA indicated that Appellant requires PROM due to his inability to maintain range of motion independently because of pain. *Id.* at 8. The MassHealth representative argued that the clinical record indicates that Appellant has sufficient functional ability to perform this activity without physical assistance. PROM is only indicated when a member is not able to independently move his own limbs. Appellant is ambulatory with a cane and minimal contact assistance. He is independent to perform grooming tasks, eating, bladder care, and it is documented that he drives to local appointments such as his pain clinic and nephrology. PROM is not medically necessary for someone who can move his own limbs, which Appellant can.

Appellant testified that the PROM he performs with his PCA does require assistance. Appellant has little strength. As an example of the PCA assistance he receives for PROM, Appellant described the process in which he will lie on his back and raise his leg to have his PCA stretch his hamstring and lower back. Appellant cannot physically perform this stretch on his own to get the range of motion he needs to relieve pain and keep muscles stretched. Appellant experiences release in his back, buttocks, and leg which improves the quality of his life. Appellant has severe arthritis in his feet. These exercises keep Appellant mobile and out of bed. Appellant testified that his doctor would sign off on these exercises. Appellant argued that it is a better use of his time to have his PCA help him stretch than the alternative, which would be physical therapy (PT). Appellant is trying to limit his travel time due to his difficulties with driving. Appellant argued that he has been approved time for PROM previously and therefore the pattern should continue.

The MassHealth representative argued that PROM is for people who cannot put their major joints in action, such as people unable to walk or comb their hair. Myofascial release for tight muscles

and stretching exercises are different from PROM and are not covered by the PCA program. Though Appellant was approved for PROM in the past, services are reviewed for medical necessity on a yearly basis, and what was approved in the past may not be appropriate today.

Appellant argued that the PCA program is keeping him from PT or a nursing home. Appellant's health is getting worse and is more complicated than as presented. Appellant has total endocrine failure. Appellant does not have family who can assist with this task. Appellant defines PROM differently from MassHealth. Appellant argued that 19 hours a week is not a lot and that his PCA has done things on her own time to get things done, such as shopping.

The MassHealth representative suggested that Appellant consult with PT, though it is a time-consuming task. The purpose of PT is to design exercises that Appellant can do independently. A PT can also perform myofascial release to help with pressure on certain areas to help decrease scar tissue or tight tissues and allow for more mobility and more flexibility. PT is a covered service and will work with Appellant to keep him independent and help him perform these stretches at home independently. Appellant argued the PROM he was doing with his PCA was keeping everything in line, a few minutes here and there. It was keeping him flexible enough.

Appellant testified that he is having trouble with incontinence issues and asked about additional time for assistance with that. The MassHealth representative testified that a request for an adjustment can be submitted by the PCMA.

The hearing record was held open and extended through May 1, 2024 for Appellant to provide clinical records in support of his need for PROM, and through May 10, 2024 for MassHealth to review and respond. Exhibit 5, 6. Appellant submitted a letter from his neurosurgery PA-C dated April 11, 2024 stating that "it is medically necessary that [Appellant] continue with PROM (passive range of motion) exercises at this time to maintain his mobility, function & chronic pain symptoms." Exhibit 6. Appellant also submitted a prescription for knee physical therapy from his orthopedic team prescribing full PROM, full active range of motion, full weight bearing, and other exercises. Exhibit 7.

Additionally, Appellant's pain management doctor wrote that

[Appellant] is a patient at our pain management clinic suffering from chronic low back and knee pains and many other disabling conditions. These chronic pains are managed with medications and intervention here at our clinic with procedures. He will need continuous ongoing medical care due to his disabling conditions. [Appellant] continues to need ongoing assisted passive range of motion for his extremities to keep help him keep his medical conditions under control.

Exhibit 8.

Finally, Appellant wrote in his post-hearing submission that he had been approved for PROM long

ago, likely before Covid, based on special needs. Exhibit 9.

On May 10, 2024, the MassHealth representative wrote that she reviewed each of the additional submissions by Appellant. Based on this information, MassHealth upheld the denial of PROM. Exhibit 10. MassHealth cited the definition of PROM found in 130 CMR 422.402, “movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move.” MassHealth wrote that the PA-C and pain specialist failed to address Appellant’s recent T-12 spinal fracture or the insufficiency of Appellant’s ability to ambulate, sit on the floor and arise from the floor as per his testimony. *Id.* MassHealth argued that Appellant’s T-12 fracture which occurred in February 2024 would require skilled care, not unskilled PROM, citing 130 CMR 450.204(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.”) *Id.* MassHealth reiterated the arguments raised at hearing of Appellant’s functional capacity. *Id.* Finally, MassHealth argued that PROM is not indicated for a person with functional limbs and contraindicated for a person with a T-12 fracture. *Id.*

Findings of Fact

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

1. On February 22, 2024, Appellant’s PCMA submitted a re-evaluation for PCA services, requesting 23.75 hours per week of PCA services on Appellant’s behalf.
2. On February 23, 2024, MassHealth modified Appellant’s request and approved 19 PCA hours per week. The dates of service were from February 27, 2024 through February 26, 2025. Exhibit 1.
3. Appellant filed a timely appeal on February 28, 2024 and was entitled to retain the prior level of services pending the outcome of the hearing. Exhibit 2.
4. Appellant is in his [REDACTED] with diagnoses including fibromyalgia, autoimmune disease of multiple organ systems, cellulitis, and diabetes. He has impaired mobility secondary to degenerative joint disease in the neck and lumbar back, and arthritic pain with impaired strength in bilateral hands and knee. Exhibit 4 at 7-8.
5. Appellant sustained a fall in [REDACTED] causing a fractured T-12 vertebra with nerve pain. *Id.*
6. Appellant walks with a cane and contact assistance for ambulation especially on stairs, avoiding ambulation during difficult episodes. *Id.*

7. Appellant is independent with upper body tasks such as grooming and bathing his upper torso. *Id.* at 15, 16.
8. Appellant is able to drive short distances. *Id.* at 32.
9. For PROM, the PCMA requested 10 minutes, 1 time per day, 7 days a week for each of the four extremities. *Id.* at 13.
10. MassHealth denied this request.
11. On April 11, 2024, Appellant's neurosurgery PA-C wrote that "it is medically necessary that [Appellant] continue with PROM (passive range of motion) exercises at this time to maintain his mobility, function & chronic pain symptoms." Exhibit 6.
12. Appellant submitted a prescription for knee physical therapy from his orthopedic team prescribing full PROM, full active range of motion, full weight bearing, and other exercises. Exhibit 7.
13. Additionally, Appellant's pain management doctor wrote that Appellant continues to need ongoing assisted passive range of motion for his extremities to keep help him keep his medical conditions under control. Exhibit 8.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and

(g) toileting.

(4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

(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.

Additionally, “[m]edically 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.” 130 CMR 450.204(B).

MassHealth covers assistance with the following tasks under the PCA program:

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

(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 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 (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 personal care 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 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.

Here, it is undisputed that Appellant qualifies for PCA services. The only issue in dispute is MassHealth's denial of PCA assistance with PROM exercises.

Regarding PROM, this appeal is denied. PROM is defined by the regulation as "movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move." 130 CMR 422.402. MassHealth's interpretation is that PROM is not indicated for an individual who can move their major joints independently. MassHealth also argued that PROM may be contraindicated for individuals with T-

12 fracture and Appellant's medical notes do not address this.

Appellant argued that he is not able to do the full range of motion independently and the PCA assists him with stretches at home so that he is flexible and mobile. Though Appellant's providers indicated a need for PROM, the providers did not describe the specific exercises Appellant needs and whether these exercises meet the regulatory definition of PROM to be performed by a PCA. The notes also do not address why Appellant requires these exercises for joints he is able to move independently. Additionally, the prescription for PROM (in addition to active exercises and other interventions) does not reference PROM by a PCA, but rather by a PT. While PT may be inconvenient for Appellant, it is a covered skilled service that may be better suited to address Appellant's significant mobility concerns. Accordingly, this appeal is denied.

Order for MassHealth

Remove aid pending.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

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