

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2403932
Decision Date:	5/30/2024	Hearing Date:	04/26/2024
Hearing Officer:	Christine Therrien		

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
Decision Date:	5/30/2024	Hearing Date:	04/26/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	■
Hearing Location:	Quincy Harbor South Tower (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 1/11/24, MassHealth modified the appellant's prior authorization request for a personal care attendant (PCA) services. (130 CMR 422.410 and Exhibit 1). The appellant filed this appeal in a timely manner on 3/10/24. (130 CMR 610.015(B) and Exhibit 2). Modification of a prior authorization (PA) request is 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 prior authorization (PA) request for a personal care attendant (PCA) reevaluation was submitted to MassHealth on 1/8/24 by Ethos, a PCM agency, for 121 hours and 45 minutes per week for one year. The MassHealth representative testified that MassHealth modified this request on 1/11/24 to 92 hours and 30 minutes per week for one year. The dates of service are effective 1/25/24 to 1/24/25. The appellant is [REDACTED] with primary diagnoses of progressive dementia with cognitive and sensory impairment, arthritis, legal blindness, hard of hearing, total incontinence, a stage 3 pressure ulcer, and obesity; she is bedbound and uses a Hoyer lift. The appellant lives with adult children and has skilled VNA services.¹ The MassHealth representative testified that there are 6 modifications made based on the MassHealth regulations for activities of daily living (ADLs), instrumental activities of daily living (IADLs), medical necessity, and non-covered services.

The MassHealth representative testified the appellant requested 10 minutes, 8 times per day, seven days per week for repositioning. MassHealth modified this to 5 minutes, eight times per day, seven days per week. The MassHealth representative testified that this request was modified because the time requested for assistance with repositioning is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that the documentation states the PCA provides incontinence care every two hours with repositioning, as well as balm application for skin maintenance, and to avoid further pressure ulcers.

The appellant's son is her PCA and represented her at the appeal. The appellant's representative asked if there is a standard of care for repositioning. The MassHealth representative testified that the times per day is appropriate, every two hours. The MassHealth representative testified that the PCM agency requested 8 episodes, which was not modified, but the 10 minutes was excessive given that the appellant is moved around quite a bit. The MassHealth representative testified that 5 minutes should be more than sufficient to reposition the appellant. The MassHealth representative testified that the appellant was 100% dependent last year and per the documentation, the appellant remains 100% dependent. The MassHealth representative testified that the time requested this year was 10 minutes per episode and last year the request was for 4 minutes per episode.

The appellant's representative testified that the hours approved last year were grossly inadequate.

The MassHealth representative testified that the appellant requested 30 minutes twice per day, seven days per week to each extremity for Passive Range of Motion (PROM). MassHealth modified this to 15 minutes, twice per day, seven days per week to each extremity. The MassHealth representative testified that this was modified because the time requested for

¹ VNA visits once per week for wound care of a pressure ulcer. (Exhibit 4, p. 26).

assistance with PROM is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that the documentation states that the son reports the appellant complains of pain in hands and limbs, especially with PROM, and therefore the appellant can be resistant to care. The MassHealth representative testified that the time requested is contraindicated based on the documentation submitted describing the appellant's pain level and resistance. The MassHealth representative testified that it does not appear to be beneficial to the appellant's overall well-being to receive 30 minutes of PROM twice a day to each extremity, and that PROM is also intended to alleviate pain and not cause pain.

The appellant's representative testified that the hours approved last year were grossly inadequate and insisted on maintaining the hours requested this year.

The MassHealth representative testified that the appellant requested 25 minutes, twice per week for hair washing. MassHealth modified this to 0. The MassHealth representative testified that the time for hair washing is included within the bathing task of 60 minutes per day, seven days per week. The MassHealth representative testified that there was no additional documentation indicating that there was anything special going on with hair washing that would justify 25 minutes twice a week, and that it can be included in the 60 minutes seven days per week.

The appellant's representative testified that the appellant needs her hair deep cleaned, which requires more time.

The MassHealth representative testified that the appellant requested 10 minutes daily, seven days per week for nail care. MassHealth modified this to 10 minutes per week which is the standard of care for nail care.

The appellant's representative testified that the appellant's fingers are contracted and locked together, so he puts something in her hand to physically separate her fingers so the nails can be trimmed.

The MassHealth representative testified that the appellant requested 30 minutes, three times per day, seven days per week for PCA assistance with eating, and 5 minutes, three times per day, seven days per week of PCA assistance with consuming liquids. MassHealth modified the eating only to 20 minutes, three times per day, seven days per week. The MassHealth representative testified that this was modified because the time requested for assistance with eating is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that the documentation states she requires cues to swallow, which is not covered. The MassHealth representative testified that the appellant requires all food

to be pureed, which is part of meal preparation, an IADL, not part of eating. The MassHealth representative testified that the PCA is reimbursed for the act of feeding the appellant only, and not for the time that it takes for the appellant to chew or swallow, or for the PCA to cue her to swallow. The MassHealth representative testified that MassHealth would only pay the PCA for time to put the food on the spoon or fork and put it into the appellant's mouth.

The appellant's representative stated that he insisted on the 30 minutes allocated for the eating activity.

The MassHealth representative testified that the appellant requested 20 minutes, nine times per day, seven days per week for bladder care. MassHealth modified this to 15 minutes, nine times per day, seven days per week. The MassHealth representative testified that this part of the request was modified because the time requested for bladder care is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that the documentation states the appellant requires 24/7 supervision, she is incontinent of bladder and bowel, and to maintain the appellant's skin integrity, the PCA provides incontinence care every two hours with repositioning, as well as balm application to skin to maintain and avoid further pressure ulcers. The MassHealth representative testified that the appellant requested and was approved for 15 minutes per day, seven days per week, for bowel care, so MassHealth matched the bladder care to the same time per episode.

Findings of Fact

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

1. A prior authorization request for a PCA reevaluation was submitted to MassHealth on 1/8/24 by Ethos for 121 hours and 45 minutes per week for one year.
2. By notice dated 1/11/24, MassHealth modified this request to 92 hours and 30 minutes per week for one year. The dates of service are effective 1/25/24 to 1/24/25.
3. The appellant is [REDACTED] with primary diagnoses of progressive dementia with cognitive and sensory impairment, arthritis, legal blindness, hard of hearing, total incontinence, a stage 3 pressure ulcer, and obesity; she is bedbound and uses a Hoyer lift.
4. The appellant lives in the community with adult children, her son is her PCA, and she receives skilled VNA services.
5. MassHealth made 6 modifications to the time requested based on the MassHealth

regulations for ADLs, IADLs, medical necessity, and non-covered services.

6. The appellant requested 10 minutes, 8 times per day, seven days per week for repositioning.
7. MassHealth modified this to 5 minutes, 8 times per day, seven days per week.
8. The request was modified because the time requested for assistance with repositioning is longer than ordinarily required for someone with the appellant's physical needs.
9. The documentation states the PCA provides incontinence care every two hours with repositioning, as well as balm application for skin maintenance and to avoid further pressure ulcers.
10. The time requested this year was 10 minutes per episode, and last year the request was for 4 minutes per episode.
11. The appellant requested 30 minutes, twice per day, seven days per week to each extremity for PROM.
12. MassHealth modified this to 15 minutes, twice per day, seven days per week to each extremity.
13. This was modified because the time requested for assistance with PROM is longer than ordinarily required for someone with the appellant's physical needs. The documentation states that the appellant complains of pain in hands and limbs, especially with PROM; therefore, the appellant can be resistant to care.
14. The appellant requested 25 minutes, twice per week for hair washing.
15. MassHealth modified this requested time to 0.
16. Hair washing is included within the bathing task of 60 minutes per day, seven days per week. No additional documentation was included that states that there were special circumstances with hair washing that would justify 25 minutes twice a week; it can be included in the 60 minutes, seven days per week.
17. The appellant requested 10 minutes daily, seven days per week for nail care.
18. MassHealth modified this to 10 minutes per week, which is the standard of care for nail care.

19. The appellant's fingers are contracted and locked together.
20. The appellant requested 30 minutes, three times per day, seven days per week of PCA assistance with eating and 5 minutes, three times per day, seven days per week of PCA assistance for consuming liquids.
21. MassHealth modified the eating only to 20 minutes, three times per day seven days per week.
22. This was modified because the time requested for assistance with eating is longer than ordinarily required for someone with the appellant's physical needs.
23. The documentation states the appellant requires cueing to swallow, which is not payable by MassHealth.
24. The appellant requires all food to be pureed, which is part of PCA assistance with meal preparation, an IADL, not part of eating.
25. MassHealth would only pay the PCA for time to put the food on the spoon or fork and put it into the appellant's mouth.
26. The appellant requested 20 minutes, nine times per, day seven days per week for bladder care.
27. MassHealth modified this to 15 minutes, nine times per day, seven days per week.
28. This was modified because the time requested for bladder care is longer than ordinarily required for someone with the appellant's physical needs.
29. The documentation states the appellant requires 24/7 supervision, she is incontinent of bladder and bowel, and to maintain her skin integrity, the PCA provides incontinence care every two hours with repositioning, as well as balm application to skin to maintain and avoid further pressure ulcers.
30. The appellant requested and was approved for 15 minutes per day, seven days per week for bowel care so MassHealth matched the bladder care time per episode.

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.

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 include, but are not limited to, health care reasonably known by the provider or identified by the MassHealth 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.

(130 CMR 450.204(A))

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; or
- (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 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.

The appellant suffers from cognitive impairment, and does not initiate or follow through with tasks, thus requiring the PCA to wait for her. MassHealth does not pay for the time the PCA has to wait or cue the appellant to eat. Due to the appellant's cognitive impairment, she requires assistance with all ADLs. MassHealth took into consideration the time it ordinarily takes to perform each ADL and allotted time for each task accordingly. Additionally, the evaluation notes that the appellant is in discomfort during PROM. If PROM causes the appellant discomfort, it is contraindicated to perform this task for a longer time than requested. The appellant's son did not identify anything unique to the appellant that caused the ADLs to take longer than ordinarily required for maximum hands-on assistance.

For these reasons, this appeal is denied.

Order for MassHealth

As previously adjudicated by MassHealth, award 92 hours, 30 minutes per week of PCA assistance for one year, for the period 1/25/24 through 1/14/25.

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