

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2405719
Decision Date:	06/14/2024	Hearing Date:	05/29/2024
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, R.N., Optum

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:	Denied	Issue:	PCA services
Decision Date:	06/14/2024	Hearing Date:	05/29/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Pro se
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 3/14/24, 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 4/29/24. (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 prior authorization request for a personal care attendant (PCA) services reevaluation was submitted to MassHealth on 2/27/24 by Tri Valley,

Inc. for 18 hours and 0 minutes per week for one year. The MassHealth representative testified that MassHealth modified this request on 3/14/24 to 15 hours and 0 minutes per week for one year. The dates of service are effective 3/17/24 to 3/16/25. The appellant is [REDACTED] with primary diagnoses of fibromyalgia, carpal tunnel syndrome, bipolar disorder, and a history of catatonic syndrome.¹ The appellant lives with her spouse and [REDACTED] daughter. The MassHealth representative testified that there are 5 modifications made based on the MassHealth regulations for activities of daily living (ADLs), instrumental activities of daily living (IADLs), medical necessity, and regulation 130 CMR 422.402.

The MassHealth representative testified the appellant requested 10 minutes, 1 time per day, seven days per week for dressing. MassHealth modified this to 7 minutes, 1 time per day, seven days per week. The MassHealth representative testified that this request was modified because the time requested for dressing is longer than ordinarily required for someone with your physical needs. The MassHealth representative testified the appellant requested 7 minutes, 1 time per day, seven days per week for undressing. MassHealth modified this to 5 minutes, 1 time per day, seven days per week. The MassHealth representative testified that this request was modified because the time requested for dressing is longer than ordinarily required for someone with the appellant's physical needs. The MassHealth representative testified that the documentation states that the appellant has difficulty using her upper extremities and lower extremities due to chronic pain related to fibromyalgia, and the appellant reports pain in her neck, shoulders, right hand, and has difficulty reaching above her head. (Exhibit 5).

The appellant testified that she has arthritis and that her daughter is her PCA. The appellant testified that she tries to be as helpful as possible when her daughter is dressing her.

The MassHealth representative testified that last year MassHealth approved 7 minutes per day for dressing and 5 minutes per day for undressing.

The MassHealth representative testified that the appellant requested 7 minutes, six times per day, seven days per week for bladder care. MassHealth modified this to 5 minutes, six times per day, seven days per week. The MassHealth representative testified that this 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 appellant requested 7 minutes, two times per day, seven days per week for bowel care. MassHealth modified this to 5 minutes, two times per day, seven days per week. The MassHealth representative testified that this was modified because the time requested for bowel 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 assistance with transfer on and off a low toilet, that the appellant has some urinary incontinence and that she requires assistance with clothing management and hygiene. (Exhibit

¹ The appellant reports one catatonic state episode in [REDACTED]. (Exhibit 5, p. 7).

5). The MassHealth representative testified that the documentation also indicates that the appellant is ambulatory and can transfer independently with a cane.

The appellant testified that when she has catatonic episodes, she cannot do anything herself and she needs much more assistance.

The MassHealth representative testified that MassHealth does not pay for anticipatory time, and only pays for occasions when the appellant needs hands-on assistance on a regular basis.

The MassHealth representative testified that the appellant requested 30 minutes daily for meal preparation and cleanup. MassHealth modified this to 25 minutes daily because the appellant lives with her spouse, and when a member lives with family, family members are expected to participate in the care. The MassHealth representative testified that the documentation states the appellant requires assistance with breakfast and lunch, and the appellant is ambulatory and can assist with her meal preparation.

The appellant testified that her spouse works from 4 am until approximately 6 to 8 pm, and he also works on the weekends.

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 2/27/24 by Tri Valley, Inc. for 18 hours and 0 minutes per week for one year.
2. MassHealth modified this request on 3/14/24 to 15 hours and 0 minutes per week for one year.
3. The dates of service are effective 3/17/24 to 3/16/25.
4. The appellant is [REDACTED] with primary diagnoses of fibromyalgia, carpal tunnel syndrome, bipolar disorder, and a history of catatonic syndrome.
5. The appellant lives with her spouse and [REDACTED].
6. There are 5 modifications made based on the MassHealth regulations for activities of daily living (ADLs), instrumental activities of daily living (IADLs), medical necessity, and regulation 130 CMR 422.402
7. The appellant requested 10 minutes, 1 time per day, seven days per week for dressing.

8. MassHealth modified this to 7 minutes, 1 time per day, seven days per week. The MassHealth representative testified that this request was modified because the time requested for dressing is longer than ordinarily required for someone with the appellant's physical needs.
9. The appellant requested 7 minutes, 1 time per day, seven days per week for undressing.
10. MassHealth modified this to 5 minutes, 1 time per day, seven days per week. The MassHealth representative testified that this request was modified because the time requested for dressing is longer than ordinarily required for someone with the appellant's physical needs.
11. The documentation states that the appellant has difficulty using her upper extremities and lower extremities due to chronic pain related to fibromyalgia and the appellant reports pain in her neck, shoulders, right hand, and has difficulty reaching above her head.
12. Last year MassHealth approved 7 minutes per day for dressing and 5 minutes per day for undressing.
13. The appellant requested 7 minutes, six times per day, seven days per week for bladder care.
14. MassHealth modified this to 5 minutes, six times per day, seven days per week. This was modified because the time requested for bladder care is longer than ordinarily required for someone with the appellant's physical needs.
15. The appellant requested 7 minutes, two times per day, seven days per week for bowel care.
16. MassHealth modified this to 5 minutes, two times per day, seven days per week because the time requested for bowel care is longer than ordinarily required for someone with the appellant's physical needs.
17. The documentation states the appellant requires assistance with transfer on and off a low toilet, the appellant has some urinary incontinence and requires assistance with clothing management and hygiene. The appellant is ambulatory and can transfer independently with a cane.
18. The appellant testified that when she has catatonic episodes, she cannot do anything herself and she needs much more assistance.

19. MassHealth does not pay for anticipatory time and only pays for time the appellant needs hands-on assistance on a regular basis.
20. The appellant requested 30 minutes daily for meal preparation and cleanup.
21. MassHealth modified this to 25 minutes daily because the appellant lives with her spouse, and when a member lives with family, family members are expected to participate in the care.
22. The documentation states the appellant requires assistance with breakfast and lunch and the appellant is ambulatory and can assist with her meal preparation.

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 MassHealth agency 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 ADLs and IADLs. (130 CMR 422.410).

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:

- (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.

(130 CMR 422.412)(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.

MassHealth received a PA request for PCA services on the appellant's behalf from her PCM agency. The appellant lives with her spouse and child. The appellant requested 30 minutes per day of PCA assistance with meal preparation and cleanup. MassHealth modified the request to 25 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 meal prep. For this reason, the MassHealth decision to authorize 25 minutes of PCA assistance for meal preparation and cleanup per day was correct.

130 CMR 422.402 defines "Activity Time" as the actual amount of time spent by a PCA physically assisting the member with ADLs. The PCA program does not pay for time in anticipation of a sporadic episode, in this case, the appellant's catatonic syndrome. The appellant requires moderate assistance with her ADLs due to her fibromyalgia and carpal tunnel

syndrome, which MassHealth accounted for through the approval of 15 hours per week of PCA assistance time for the ADLs of dressing, undressing, bladder care and bowel care.

For these reasons, this 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