

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2406032
Decision Date:	7/15/2024	Hearing Date:	05/15/2024
Hearing Officer:	Susan Burgess-Cox	Record Open to:	06/14/2024

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen



*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:	Prior Authorization
Decision Date:	7/15/2024	Hearing Date:	05/15/2024
MassHealth's Rep.:	Kelly Rayen	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone	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 April 8, 2024, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1). The appellant filed a timely appeal on April 16, 2024. (130 CMR 610.015(B); Exhibit 2). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care services.

Issue

Whether MassHealth was correct in modifying the appellant's request for personal care services pursuant to 130 CMR 422.000.

Summary of Evidence

The appellant is an adult who has diagnoses of rheumatoid arthritis in the hands, wrists, fingers, knees, ankles and feet; [REDACTED] anxiety; depression; hypertension; migraines; lupus; degenerative bone disease; and osteopenia. (Testimony; Exhibit 4). On March 18, 2024, MassHealth received a request to increase the appellant's Personal Care Attendant (PCA) hours temporarily as the appellant broke the pinky and index finger on the right hand, the bones became infected and required daily dressing changes. (Testimony; Exhibit 4). Records show that the appellant had at least three ER visits within the last year and two hospitalizations in February and March due to sepsis.

The appellant was approved for 60.75 day/evening PCA hours each week and requested an additional 17.5 day/evening hours each week for a total of 78.25 hours each week from March 18, 2024 to April 9, 2024. MassHealth modified this request and approved an additional 1.25 day/evening hours each week from March 18, 2024 to April 9, 2024.

The appellant requested 30 minutes, one time each day to change the dressing on her right hand. MassHealth modified this request and approved 10 minutes one time each day providing 5 minutes for the dressing on each finger as the appellant required dressings on the index and pinky finger alone. Based on the testimony presented at hearing, MassHealth agreed to provide a total of 20 minutes each day for changing the dressings on the index and pinky fingers. The appellant agreed to this new modification.

The appellant requested 30 minutes, 4 times each day for assistance with IV Antibiotics. MassHealth denied all of the time requested as the agency determined that this is a skilled task and the request does not meet professionally recognized standards of care. The MassHealth representative testified that the regulations governing medical necessity state that the 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)).

The MassHealth representative testified that the appellant has a peripherally inserted central catheter (PICC) line which is a long, thin tube that's inserted through a smaller vein and passed through to the larger veins near the heart. This is what is utilized to provide the appellant with IV antibiotics. The MassHealth representative noted that a PICC line requires careful care and monitoring for complications including infection and blood clots. Due to the need for careful care and monitoring, having a PCA perform such a task is not of a quality that meets professionally recognized standards of care for MassHealth to approve payment through the PCA program. Records indicate that the appellant receives assistance with medications as part of her regular PCA hours. This assistance includes the PCA handing the appellant medications and water two times each day. The appellant receives nursing services at least one time each week.

The appellant responded that the PCA is her son and he she was told that if he received the correct training, he could perform this task. The appellant did not present records or clear testimony regarding any training. The MassHealth representative responded that family members can be trained to perform such tasks, but her son would be providing the service as a family member, not as a PCA paid by MassHealth. The appellant stated that she has seen documents from MassHealth stating that individuals who are trained can perform skilled tasks such as this. The MassHealth representative responded that MassHealth's policies regarding skilled services state that the agency will not pay a PCA for skilled tasks such as this. The appellant testified that this is not a task that she can perform on her own so needs the assistance of her PCA to perform the task.

The appellant also challenged the start date of the temporary modification. The appellant testified that the PCA agency stated that this temporary increase in coverage would be from February 20, 2024 through April 6, 2024. The appellant acknowledged that no notices were provided by MassHealth prior to the one on appeal. The appellant testified that the PCM agency told her that they submitted a prior authorization request in February 2024 and MassHealth asked for additional information. The MassHealth representative acknowledged that the initial prior authorization request was deferred as it was not complete and the complete adjustment presented by the agency requested services from March 18, 2024 through April 9, 2024.

The record was held open to provide the appellant with the opportunity to present additional evidence regarding the authorization period as well as anything related to policies on training a PCA to perform skilled tasks as the appellant argued that the agency published such guidance for members.

During the record open period the appellant submitted documents that were incorporated into the hearing record as Exhibit 7. A response from MassHealth was incorporated into the hearing record as Exhibit 8. The appellant presented electronic mail messages that appear to be from a representative at the Personal Care Management (PCM) agency which state that they completed the adjustment on the phone on February 29th but did not receive documentation from the Visiting Nurses Association (VNA) until March 18, 2024 which is when they submitted the evaluation to MassHealth. (Exhibit 7).

The appellant also provided a copy of Medical Necessity Guidelines from Commonwealth Care Alliance, (CCA), a MassHealth-contracted Integrated Care Organization (ICO). As an ICO, CCA can provide more to members than MassHealth allows but not less. One example of this is that the CCA guidelines allow coverage for PCA assistance with "cueing or monitoring with at least two Activities of Daily Living (ADLs) and/or physical assistance with 2 ADLs". The MassHealth regulations state that assistance provided in the form of cueing, prompting, supervision, guiding, or coaching is not a covered service. The Medical Necessity Guidelines for CCA state that a PCA may administer and provide skilled care and treatments that are outside the scope of paraprofessionals employed by an agency. Neither party noted language in the MassHealth

regulations that allows a PCA to provide skilled care and treatments.

The MassHealth representative responded that an evaluation was performed on February 29, 2024 and a complete prior authorization submission was presented to MassHealth on March 18, 2024. The MassHealth representative stated that the effective date of an adjustment request is the date MassHealth receives the prior authorization from the PCM agency. The effective date of all other prior authorization requests is the date MassHealth sends notice of its decision to the consumer. (Exhibit 8). The MassHealth representative also cited regulations at 130 CMR 422.412(B) which state that medical services available from other MassHealth providers, such as physician, pharmacy or community health center are non-covered PCA services. The MassHealth representative noted that the process for administering medication through a PICC line requires the administration skills, judgement and assessment of a nurse due to the high-risk factors associated with PICC line administration and management. Therefore, MassHealth upheld its decision regarding the administration of medication through a PICC line.

Findings of Fact

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

1. The appellant is an adult who has diagnoses of rheumatoid arthritis in the hands, wrists, fingers, knees, ankles and feet; [REDACTED] anxiety; depression; hypertension; migraines, lupus, degenerative bone disease; and osteopenia.
2. On March 18, 2024, MassHealth received a request to increase the appellant's Personal Care Attendant (PCA) hours temporarily.
3. The appellant receives 60.75 hours of PCA services each week.
4. The appellant requested an additional 17.5 day/evening hours.
5. MassHealth approved an additional 1.25 day/evening hours from March 18, 2024 to April 9, 2024.
6. The PCM agency submitted an adjustment on the phone on February 29, 2024.
7. On March 18, 2024, the PCM agency submitted an evaluation and a request for an increase in services that met all of the regulatory requirements for a prior authorization submission.
8. The appellant broke the pinky and index finger on the right hand, the bones became infected and require daily dressing changes.

9. The appellant has had at least three ER visits within the last year.
10. The appellant had hospitalizations in February and March due to sepsis.
11. The appellant requested 30 minutes, one time each day to change the dressing on her right hand.
12. At hearing, the parties agreed to MassHealth approving a total of 20 minutes each day for changing the dressings.
13. The appellant requested 30 minutes, 4 times each day for assistance with IV antibiotics.
14. MassHealth denied the time requested.
15. The appellant has a peripherally inserted central catheter (PICC) line to provide IV antibiotics.
16. Administering medication through a PICC line requires careful care and monitoring for complications including infection and blood clots.
17. MassHealth determined that authorizing time for a PCA to perform this task does not meet professionally recognized standards of care as it is a skilled task.
18. The appellant receives nursing services at least one time each week.
19. The appellant receives assistance with medications where the PCA hands the appellant medications and water two times each day.
20. The appellant would not be able to administer medication through the PICC line on her own.
21. Commonwealth Care Alliance, (CCA), a MassHealth-contracted Integrated Care Organization (ICO), has guidelines for PCA services that state that a PCA may administer and provide skilled care and treatments that are outside the scope of paraprofessionals employed by an agency.
22. The decision on appeal is one made by MassHealth, not CCA.

Analysis and Conclusions of Law

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). MassHealth covers personal care 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 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. assistance with medications or other health related needs;
 - c. bathing/grooming;
 - d. dressing or undressing;
 - e. passive range-of-motion exercises;
 - f. eating; and
 - g. toileting.
- (4) MassHealth has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416). The regulations for MassHealth define a service as "medically necessary" if 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. (130 CMR 450.204(A)). 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. (130 CMR 450.204(B)). A provider must make those records, including medical records, available to MassHealth upon request. (130 CMR 450.204(B)); 42 U.S.C. 1396a(a)(30), 42 CFR 440.230 and 440.260.)

Upon hearing testimony and reviewing evidence at hearing, MassHealth approved 20 minutes each day for changing the dressings on the appellant's hand. The appellant agreed to this adjustment. As MassHealth agreed to adjust its decision and the appellant did not challenge the modification made at hearing, the part of the appeal associated with the adjustment made to the time for changing dressings is dismissed. (130 CMR 610.051(B)).

MassHealth was correct in denying time requested for the administration of medication through a PICC line. The basis for MassHealth's decision regarding the performance of the task by an untrained, non-skilled professional has substantial merit. The regulations specifically state that 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. (130 CMR 450.204(B)). The fact that the appellant had three visits to the Emergency Room and two hospitalizations related to sepsis indicate that the appellant is vulnerable to infections and requires services of a quality that meet professionally recognized standards of care. As the MassHealth representative noted, administering medication through a PICC line requires careful care and monitoring for complications including infection and blood clots. Additionally, the regulations specifically define activities of daily living and while such activities include assistance with medications or other health-related needs, the task is defined as physical assistance to take medications that would otherwise be self-administered. (130 CMR 422.410(A)(2)). The appellant receives such services in taking medications that she would otherwise take on her own. However, both parties noted at hearing that the appellant would not be able to self-administer the IV medications regardless of her current condition. Therefore, the task of providing IV antibiotics through a PICC line does not meet the definition of assistance with medications for the PCA program.

In addition to such services not meeting the regulatory definition of assistance with medications for the PCA program, the regulations governing nursing services state that such services are those that must be provided by a registered nurse or a licensed practical nurse to be safe and effective, considering the inherent complexity of the service, the condition of the patient, and accepted standards of medical and nursing practice. (130 CMR 438.410(A)(1)). The regulations state that some services are nursing services based on complexity alone. (130 CMR 438.410(A)(2)). The testimony presented by both parties regarding the complexities in the appellant's care as well as the history of recent hospitalizations, including 2 for sepsis, demonstrates that the decision made by MassHealth denying time for this task was correct to ensure safe and appropriate treatment of the appellant's condition.

The MassHealth representative was also correct in noting that MassHealth does not cover medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services. (130 CMR 422.412(B)). The MassHealth representative noted that the administration of medications through a PICC line would be available from other MassHealth providers such as a nurse. The appellant noted that she receives nursing services but not daily. It was not clear whether the appellant attempted to increase the time for nursing services to assist in the administration of the IV medication. The appellant only testified that she sees a nurse only one time each week.

The guidance from Commonwealth Care Alliance, (CCA), a MassHealth-contracted Integrated Care Organization (ICO) is not applicable to this case. As an ICO, CCA can provide more to members

than MassHealth allows but not less. While the ICO guidelines state that a PCA may administer and provide skilled care and treatments that are outside the scope of paraprofessionals employed by an agency, that statement is not definitive providing an ICO with flexibility to approve or deny coverage for a PCA to administer medication through a PICC line. The guidelines presented by the appellant do not speak to specific tasks for which the ICO may authorize time and this appeal is based upon a decision made by MassHealth, not CCA. The decision made by MassHealth to deny time for the administration of medication through a PICC line was correct. This part of the appeal is denied.

The appellant also challenged the dates of service. Pursuant to 130 CMR 422.416, a personal care management (PCM) agency must request prior authorization as a prerequisite to payment for PCA services. Prior authorization determines only the medical necessity of the authorized service and does not establish or waive any other prerequisites for payment such as member eligibility or utilization of other potential sources of health care such as nursing services. (130 CMR 422.416). All requests for prior authorization for PCA services must be submitted on MassHealth forms in accordance with the billing instructions in Subchapter 5 of the Personal Care Manual and 130 CMR 422.416. (130 CMR 422.416). MassHealth responds to requests for prior authorization in accordance with 130 CMR 450.303.

Pursuant to 130 CMR 450.303(B), the following rules apply to prior authorization requests:

- (1) The date of any prior-authorization request is the date the request is received by MassHealth, if the request conforms to all applicable submission requirements, including but not limited to the form, the address to which the request is sent, and required documentation.
- (2) If a provider submits a request that does not comply with all submission requirements, MassHealth informs the provider
 - (a) of the relevant requirements, including any applicable program regulations;
 - (b) that the MassHealth agency will act on the request within the time limits specified in 130 CMR 450.303 if the required information is received by MassHealth within four calendar days after the request; and
 - (c) that if the required information is not submitted within four calendar days, MassHealth's decision may be delayed by the time elapsing between the four days and when MassHealth receives the necessary information.
- (3) A service is authorized on the date the MassHealth agency sends a notice of its decision to the member or someone acting on the member's behalf.

In this case, the evidence presented by both parties indicates that the initial request did not conform to all applicable submission requirements as the required documentation was not included in the submission. (130 CMR 450.303(B)). Evidence presented by both parties

indicates that MassHealth informed the provider that the request did not comply with all submission requirements and once the provider complied with all of these requirements, MassHealth authorized payment for services as of the date requested on the completed submission. (130 CMR 450.303(B)). The decision made by MassHealth regarding the start date of coverage was also correct. This part of the appeal is denied.

Order for MassHealth

If such action has not already occurred, adjust the modification made to the time requested for PCA services to approve 20 minutes each day for changing dressings beginning March 18, 2024.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

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