

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2406591
Decision Date:	7/18/2024	Hearing Date:	05/31/2024
Hearing Officer:	Christopher Jones		

Appearances for Appellant:

Pro se



Appearance for MassHealth:

Kelly Rayen, RN



*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:	Approved in part; Denied in part	Issue:	Prior Authorization; PCA; Adjustment Request
Decision Date:	7/18/2024	Hearing Date:	05/31/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Reps.:	Pro se; Friend
Hearing Location:	Telephonic	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 12, 2024, MassHealth modified the appellant's request for an adjustment to her personal care attendant services, allowing fewer hours than were requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on April 24, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours of personal care attendant services and shortened the authorization period.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000, in determining that the appellant should be allowed less time than requested, and the duration of the increase should be shorter than requested.

Summary of Evidence

On or around January 16, 2024, the appellant was reevaluated for personal-care attendant (“PCA”) services and submitted a prior authorization request for the upcoming year. MassHealth approved all time requested for PCA services, 13 hours and 45 minutes per week of day/evening hours (825 minutes). This prior authorization was to run from March 30, 2024, through March 29, 2025. At around the time this prior authorization was to go into effect, the appellant’s personal care management (“PCM”) agency, [REDACTED] submitted an adjustment request to increase PCA hours. This request sought an increase of 657 minutes per week, or 11 additional hours. (Exhibit 5, pp. 5, 73.) This increase was requested to run from March 30, 2024, through March 29, 2025.¹

The appellant has multiple complex diagnoses including: Ehlers Danlos syndrome, autism, spina bifida, gastroparesis, major depressive disorder, panic disorder, and generalized anxiety. (Exhibit 5, pp. 37, 48.) The reason for the adjustment request was that the appellant needed more hours due to

frequent periods of fatigue, poor balance, unsteady gait, difficulty bending, twisting, reaching, bilat[eral] muscle weakness in [l]egs and arms especially legs including intermittent pain in legs & back, intermittent numbness in legs [due to] spina bifida occulta. POTS causes the consumer to experience dizziness extreme fatigue, fluctuations in BP and HR, palpitation, HAs, tremors. Her Ehlers-Danlos Syndrome compounds her fatigue & causes joint pain, joint dislocations and cardiac effects l/t activity intolerance. The consumer is at high risk for injury r/t frequent falls and risk for impaired skin integrity d/t fragile skin r/t Ehlers Danlos Syndrome. [She] struggles with treatment resistant depression affect her concentration, low mood, low energy that decrease her ability to perform ADLs an IADLs. She is going to start ECT every other day for a month and then maintenance for up to 6 months. She will be dependent of PCA to transport and assist with transfers to ECT appts as the effects of anesthesia and fatigue, brain fog requires PCA assistance.

(Exhibit 5, pp. 6-7.)

MassHealth made four modifications to this request. One modification shortened the adjustment period to run for 24 weeks, from April 1, 2024, through September 15, 2024. The remaining

¹ The PCM agency’s total number of hours appears to include a typographical error. It states that the appellant is only authorized for 10 hours and 15 minutes originally (614 minutes per week). The resulting increase as calculated by the PCM agency was to 21 hours and 15 minutes per week. (Exhibit 5, p. 5.)

modifications were to the hours requested. MassHealth allowed 22 hours and 30 minutes of day/evening PCA services.

The appellant was initially combative and refused to cooperate with the hearing. One particular sticking point for her was that MassHealth refused to disclose the name and title of the person who performed the review of the adjustment request and issued the initial modification notice. She also believed that the entire PCA process was inadequate. This adjustment request was conducted over the phone, and no one came out to reevaluate her in person to see how much help she really needs. She further believed that if the nurses who conducted the assessments, or reviewed the requests, better understood her unique medical situation, they would allow her more hours. She also disputed the medical conditions identified in the request. She noted that she has autism and ADHD diagnoses, and the electronic-convulsive therapy (“ECT”) she is undergoing causes significant cognitive impairment. Because the adjustment request was done before the ECT started, no one had any idea what the effect of the ECT would be. The appellant testified that she has been undergoing ECT three days a week, and on those days, she is completely non-functional. On the days in between, she struggles significantly worse than she has in the past.

MassHealth’s representative responded that the person who performed the review for MassHealth was a registered nurse. She also testified that adjustment requests are typically done over the phone, based upon the client’s description of what they need, and then a primary care physician submits a letter confirming that need.

Regarding the substance of the modification, MassHealth’s representative detailed that the first modification was to the request for mobility assistance. The adjustment request sought three minutes, four times per day for mobility and two minutes, four times per day for transfers (140 minutes per week). MassHealth approved the time for mobility, but denied the time requested for transfers.² MassHealth’s representative testified that this was done because the request only sought minimal assistance with mobility and did not describe what assistance was needed with transferring. The appellant testified that she needs a lot more help with all aspects of mobility, especially on days she has ECT. The appellant further testified that, due to her ADHD, she requires constant redirection. She can be very unstable following ECT and basically requires constant supervision otherwise she might fall.

MassHealth’s representative responded that PCA hours are not meant to cover supervision and are only intended to cover hands-on assistance time. Further, she argued that the appellant’s description of the time needed sounds as though it is really more of an as-needed request, not a regularly recurring need for assistance. The appellant responded that her general, baseline condition had deteriorated, which was why she was referred for ECT therapy. She requires physical

² The MassHealth notice includes a typographical error. It claims that mobility time was only authorized for one minute, four times per day (28 minutes). (Exhibit 5, p. 43.) In MassHealth’s second hearing exhibit, it shows that 84 minutes per week were authorized. (Exhibit 6, p. 1.)

assistance regularly to get up from a seated position and move to a new location. On days she has ECT, she requires physical assistance with everything; she is completely incapacitated. The appellant testified that the requested adjustment time was inadequate to cover her hands-on needs on an everyday basis. For instance, on a 'good day' to get her from her bed to the bathroom, would take about four to five minutes total. She also believes that she requires this assistance at least four times per day.

MassHealth also denied the appellant's request for an increase in PCA assistance with housekeeping time from 75 minutes to 90 minutes, as the appellant was identified as able to do light cleaning. The request noted a small dog, a cat, and a bunny, as well as some clutter. The appellant has a child. MassHealth's representative testified that the PCA time is to clean up after the appellant, not her animals or her child. She also argued that an adjustment request has to be based on a change in medical circumstances. The appellant repeated that the ECT completely incapacitates her three days per week. The appellant responded that her mental functioning is so impaired in between ECT that she cannot focus sufficiently to clean. Nor can she physically keep up with dusting or picking up objects. The appellant stated that she has thoracic outlet syndrome, which causes her circulation to cut off, and her limbs go numb. Further, her POTS is a condition that can cause her to pass out if she bends over.

Finally, the appellant requested time for her PCA to bring her to her doctors' appointments, specifically to ECT. The request was for 116 minutes per week, which was calculated based upon 48 visits at 126 minutes per visit (total of 6,048 minutes across the year). MassHealth allowed 48 minutes per week, simply reducing the number of visits to 20 visits (2,520 minutes per year). MassHealth made this modification because the adjustment request described the appellant as having ECT every other day for one month, and then "maintenance for up to 6 months." (Exhibit 5, p. 29.) MassHealth reduced the frequency, based on the idea that there would be about 12 visits across four weeks at three times per week, and then that would leave eight visits across the remaining prior authorization period. MassHealth approved the amount of time per visit requested. The calculation for doctor appointment transportation takes the total number of minutes for all visits, and then divides the number by 52.14, which is the total number of weeks in a PCA authorization year.

The appellant testified that she requires total assistance following her appointments, including at least two hours of supervision. She also testified that they added an extra week of treatment at three times per week, so it was five weeks of tri-weekly visits. However, she did not start the treatment until around May 1, and she is expected to continue through the beginning of June. The appellant stated that once they discontinue ECT, she expects that they will send her for MRIs and PET scans, and she anticipates at least weekly visits for the foreseeable future. The appellant testified that diagnostic imaging would be in the same location as the ECT. She had not yet scheduled these follow up diagnostic imaging appointments.

It was agreed that the appellant's condition and treatment appear to be changing, and for that reason MassHealth's decision to shorten the adjustment period made sense. The appellant was

informed that she was welcome to update MassHealth through adjustment requests as her condition develops and her treatment plan changes.

Findings of Fact

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

- 1) The appellant is an adult with many complex diagnoses, including but not limited to: Ehlers Danlos syndrome, autism, spina bifida, gastroparesis, major depressive disorder, panic disorder, and generalized anxiety. (Exhibit 5, pp. 37, 48.)
- 2) On or around January 16, 2024, the appellant was reevaluated for PCA services. A prior authorization request was submitted for 13 hours and 45 minutes (825 minutes) per week by Northeast Independent Living for the prior authorization period of March 30, 2024, through March 29, 2025. This request was approved in full by MassHealth. (Exhibit 5, pp. 47-80.)
- 3) On or around March 30, 2024, [REDACTED] submitted an adjustment request seeking an increase of 657 minutes per week, or 11 additional hours. This increase included 140 additional minutes for mobility per week; 15 additional minutes for housekeeping per week; and 116 additional minutes per week for doctors' appointment transportation. This increase was requested to run from March 30, 2024, through March 29, 2025. (Exhibit 5, pp. 2, 5-7.)
- 4) Prior to starting her ECT, the appellant's baseline had deteriorated to the point that she required hands-on assistance moving around her home to keep her steady and safe. She cannot participate in housekeeping at all. (Exhibit 6; Testimony by the appellant.)
- 5) The appellant started electroconvulsive therapy on or around May 1, 2024, and she was scheduled for five weeks of three-times-per week therapy. She will continue to require regular visits thereafter, but she did not have a schedule of appointments. (Testimony by the appellant.)
- 6) MassHealth made four modifications to the appellant's adjustment request:
 - a. MassHealth shortened the adjustment request period to end September 15, 2024. (Exhibit 5, p. 43.)
 - b. MassHealth only authorized 84 additional minutes per week for mobility. (Exhibit 6, p. 1.)
 - c. MassHealth denied the increase to housekeeping. (Exhibit 5, p. 43; Exhibit 6, p. 3.)

- d. MassHealth authorized 20 doctors' visits at 126 minutes per visit; allowing 48 extra minutes per week. (Exhibit 5, p. 43; Exhibit 6, p. 3.)

Analysis and Conclusions of Law

MassHealth generally covers personal care attendant ("PCA") services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

Request must also "be submitted on MassHealth forms in accordance with the billing instructions in the Personal Care Manual Subchapter 5, and 130 CMR 422.416." (130 CMR 422.416.) A request

to increase ... the number of hours of PCA services must be submitted to the MassHealth agency by the member's PCM agency in writing within 30 calendar days of the member or surrogate request, and include: ... a written summary of the specific adjustment requested that includes the reason for the adjustment and the specific ADLs or IADLs for which an increase or decrease in PCA services is being requested, including the number of units, the number of hours, and the duration of time for which the adjustment is being requested

(130 CMR 422.516(B), (2).)

Along with this adjustment request, the PCM agency must submit "a letter from the member's physician ... stating that the need for an adjustment ... is a result of changes in the member's medical condition, functional status, or living situation that affects the member's ability to perform ADLs and IADLs without physical assistance." (130 CMR 422.516(B)(3).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

(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 PCA services; and

(c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that family members will provide most routine IADLs. (See 130 CMR 422.410(C).) MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the “activity time” of “providing assistance.” (130 CMR 422.411(A).) This means that MassHealth does not cover time waiting or downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

(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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

This appeal is DENIED in part with regards to the shortening of the prior authorization period. The appellant concedes that her medical situation is evolving, and she would benefit from being able to update MassHealth through an adjustment request sooner, rather than later. For this reason, MassHealth's ending this adjustment increase as of September 15 is appropriate, as it will allow the appellant the opportunity to submit updated clinical information to document her current need. If the appellant continues to have a deteriorated baseline, she should request assistance at a level that accurately reflects her needs and submit documentation regarding the prognosis for any improvement or deterioration through the remainder of the underlying prior authorization period.

The appeal is APPROVED in part with regard to the amount of time requested for mobility and housekeeping. The appellant convincingly testified that she is suffering a decrease in her functional status. This negative change in her functioning has resulted in the need for her to undergo ECT therapy, which only further diminishes her ability to care for herself on the days she receives treatment. I am convinced that, at a baseline, the appellant requires all of the requested mobility assistance and an increase in housekeeping assistance, at this time.

This appeal is also APPROVED in part and DENIED in part with regard to the transportation request to doctors' appointments. MassHealth's reasoning is sound with regards to their decision to reduce the overall number of visits the appellant should receive over the adjustment period. The appellant testified that she would require transportation three times per week for five weeks, and then an indeterminate number of visits thereafter. MassHealth accepted the requested time per visit of assistance (126 minutes per visit) and adjusted the number of visits to align with its understanding of the number of visits the appellant was likely to need: three visits per week for four weeks (12), and eight more visits across the remainder of the adjustment period.

MassHealth's total number of visits will be increased by the additional week of three visits per week. The appellant may receive 23 visits across the adjustment period (15 visits for tri-weekly ECT,

plus eight additional visits). However, MassHealth erred in dividing this reduced number of visits across the entire year-long prior authorization period. MassHealth allowed 48 minutes per week based upon 2,520 minutes ($20 * 126$) divided by 52.14. If the 23 visits are divided by the number of weeks actually in the adjustment request (23.857), the weekly PCA time is 121 minutes per week. This results in an adjustment request of 662 minutes per week. This should result in a total authorization during the adjustment period of at least the requested 24 hours and 45 minutes of day/evening PCA services.

The appellant may submit adjustment requests with documentation supporting her need for additional services above what was reviewed in this decision, including additional doctors' visits, or for services to continue following the end of the adjustment period.

Order for MassHealth

Recalculate the appellant's PCA hours, approving 662 minutes per week for the adjustment period of April 1, 2024, through September 15, 2024. This should result in at least 24 hours and 45 minutes of day/evening PCA services per week through September 15, 2024.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

A solid black rectangular redaction box covering the email address and any additional distribution list information.