

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2406642
Decision Date:	6/26/2024	Hearing Date:	05/29/2024
Hearing Officer:	Christine Therrien		

Appearance for Appellant:
Pro se

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:	Dismissed in part; Denied in part	Issue:	PCA services
Decision Date:	6/26/2024	Hearing Date:	05/29/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South - telephonic	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

Through a notice dated 4/15/24, 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 4/25/24. (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) reevaluation was submitted to MassHealth on 4/2/24 by [REDACTED] for 119 hours and 15 minutes per week for one year. The MassHealth representative testified that MassHealth modified this request on 4/15/24 to 113 hours and 0 minutes per week for one year. The dates of service are effective 7/4/24 to 7/3/25. The appellant is [REDACTED] years old with a primary diagnosis of [REDACTED] due to a [REDACTED]. The appellant experiences spasms in all extremities and has no voluntary movement of her upper or lower extremities. (Exhibit 5). The appellant can turn her head and operate her wheelchair using a joystick with her chin. (Exhibit 5). The MassHealth representative testified that there are 4 modifications made based on the MassHealth regulations for activities of daily living (ADLs), and non-covered services.

The MassHealth representative testified the appellant requested 25 minutes, 1 time per day, seven days per week each for dressing and undressing. MassHealth modified this to 20 minutes, 1 time per day, seven days per week for each activity. During the hearing, MassHealth restored the requested time for dressing and undressing. **These issues are dismissed.**

The MassHealth representative testified that the appellant requested 20 minutes, 8 times per day, seven days per week for bladder care. MassHealth modified the requested time to 15 minutes, 8 times per day, seven days per week. The MassHealth representative testified that this time 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's requests for Hoyer Lift transfers to the toilet were approved, so the bladder care is only to change the appellant's incontinence products. The MassHealth representative testified that last year, [REDACTED] requested 25 minutes per episode, which included transfers from the wheelchair to the bed. The MassHealth representative testified that bowel care was approved in full for 20 minutes, twice per day, seven days per week and that bladder care takes less time.

The appellant did not testify to any reason why 15 minutes would not be enough time to change the incontinence products.

The MassHealth representative testified that the appellant requested 35 minutes per week for PCA paperwork. MassHealth modified this to 15 minutes per week because the time requested to complete the PCA paperwork is longer than ordinarily required for someone with the appellant's physical needs.

The appellant testified that the PCA gets her computer stylus which takes about 3 minutes, and the appellant fills out the paperwork electronically.

Findings of Fact

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

1. On 4/2/24 a prior authorization request for a PCA reevaluation was submitted to MassHealth by Stavros Center for Independent Living for 119 hours and 15 minutes per week for one year.
2. On 4/15/24 MassHealth modified this request to 113 hours and 0 minutes per week.
3. The dates of service are effective 7/4/24 to 7/3/25.
4. The appellant is [REDACTED] years old with a primary diagnosis of [REDACTED] due to a [REDACTED] [REDACTED]
5. The appellant experiences spasms in all extremities and has no voluntary movement of her upper or lower extremities. The appellant can turn her head and operate her wheelchair using a joystick with her chin.
6. There are 4 modifications made based on the MassHealth regulations for ADLs, and non-covered services.
7. The appellant requested 25 minutes, 1 time per day, seven days per week each for dressing and undressing. MassHealth modified this to 20 minutes, 1 time per day, seven days per week for each activity. During the hearing, MassHealth restored the requested time for dressing and undressing. **These issues are dismissed.**
8. The appellant requested 20 minutes, 8 times per day, seven days per week for bladder care.
9. MassHealth modified this requested time to 15 minutes, 8 times per day, seven days per week.
10. This portion 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.
11. The appellant's requests for Hoyer Lift transfers were approved so the bladder care is only to change the appellant's incontinence products. Last year Stavros requested 25 minutes per episode, which included transfers from the wheelchair to the bed.
12. The time requested for bowel care was approved in full for 20 minutes, twice per day,

seven days per week, and bladder care takes less time.

13. The appellant requested 35 minutes per week for PCA paperwork.

14. MassHealth modified this to 15 minutes per week because the time requested to complete the PCA paperwork is longer than ordinarily required for someone with your physical needs.

15. The appellant testified that the PCA gets her computer stylus which takes about 3 minutes, and the appellant fills out the paperwork electronically.

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.

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.

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.

In the instant matter, MassHealth approved the time requested for Hoyer Lift transfers which are required as part of bladder care. Since the transfer part of bladder care is accounted for, the only part of bladder care that remains is the changing of the incontinence products. MassHealth approved 20 minutes per episode for bladder care, which is reasonable given that [REDACTED] requested 25 minutes per episode for bowel care which MassHealth approved. Bladder care takes less time than bowel care.

130 CMR 422.402 defines "Activity Time" as the actual amount of time spent by a PCA physically assisting the member with ADLs and IADLs. The appellant requested 35 minutes per week to assist with PCA paperwork. The appellant testified that it typically takes the PCA about 3 minutes to retrieve her computer stylus, which she requires to fill out the PCA paperwork electronically. MassHealth accounted for this time with the approval of 15 minutes per week of PCA time for this task since the PCA paperwork is not a daily task. For these reasons, the appeal of the modifications to bladder care and PCA paperwork is denied.

Order for MassHealth

None, other than to implement the agreed-to changes for PCA assistance with dressing (25 minutes once per day, every day) and undressing (25 minutes once per day, every day).

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

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