

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2408417
Decision Date:	08/23/2024	Hearing Date:	07/02/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen, RN

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:	Dismissed in part; Denied in part	Issue:	Prior Authorization – PCA Services
Decision Date:	08/23/2024	Hearing Date:	07/02/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Pro se
Hearing Location:	Remote (phone)	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 May 6, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). Appellant filed this appeal in a timely manner on May 27, 2024. (130 CMR 610.015(B); Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse. Appellant is a MassHealth member in her late ■■■ who lives in the community and appeared at hearing via telephone. (Ex. 7). The hearing began, both parties were sworn and exhibits were marked. Appellant's medical diagnoses include multiple joint pain, history of morbid obesity, history of bipolar disorder, anxiety and depression. (Testimony; Ex. 4, pp. 7-8). Appellant's personal care management (PCM) agency, Northeast Arc Inc., submitted a prior authorization request for PCA services requesting 30 hours/45 minutes per week. MassHealth modified appellant's request for PCA services to 15 hours/15 minutes day/evening hours per week. (Testimony; Ex. 4, p. 2). The appellant filed this appeal in a timely manner on May 27, 2024. (Ex. 2). There is no aid pending as member declined. (Ex. 6). At hearing, the parties were able to resolve disputes related to PCA assistance with Laundry, Housekeeping and Shopping. (Testimony).

The appellant seeks time for PCA assistance with Dressing as follows: 10 minutes a day, 7 days a week. (Testimony; Ex. 4, p. 18). MassHealth modified the requested time for Dressing to 7 minutes a day, 7 days a week. (Testimony). The MassHealth rep stated the time requested was longer than ordinarily required for someone with appellant's physical needs. MassHealth stated appellant was observed to be able to ambulate independently from room to room so there is no reason appellant cannot retrieve her own clothes before dressing. (Ex. 4, p. 11-12). The MassHealth rep noted appellant is independent with oral care (Ex. 4, p. 17) and independent with eating. (Ex. 4, p. 19). Appellant is minimum assist with Toileting and can complete toileting tasks during the day. (ex. 4, p. 20). The PCA can assist appellant with dressing.

The appellant seeks time for PCA assistance with Toileting, Bladder Care, at night as follows: 7 minutes an episode, 2 episodes a night. (Testimony; Ex. 4, p. 20). MassHealth modified the requested time for Toileting, Bladder care, at night to 0. (Testimony). The MassHealth nurse cited the documents in evidence that show appellant is independent with toileting during the day. (Testimony; Ex. 4, p. 20). The nurse stated the request for nighttime toileting hours appeared to be because appellant had a fear of falling at night due to medications she was taking. The nurse stated when appellant first came into the PCA program in 2022, she was on the same medications she is on now but was independent with bladder, bowel and nighttime toileting. (Testimony). The nurse stated the request for PCA assistance in the nighttime is a non-covered service because it is considered assistance provided in the form of cueing, prompting, supervision, guiding, or coaching. The nurse also stated that PCA assistance for this task is not medically necessary because there is a less costly medical service or site of service, comparable in effect, available, and suitable for the member requesting the service. The nurse stated appellant could use a bedside commode at night and MassHealth will pay for a commode.

Regarding dressing, appellant stated she had no questions for the MassHealth representative. She

stated she needed help and the hearing was to take a second look. Appellant stated that on the day she was observed for the evaluation, it was a good day for her to be able to move around. She stated since the evaluation she tore her rotator cuff and she needs help putting a shirt on. Appellant stated she did not have the rotator cuff injury when she was evaluated. Appellant admitted when asked she does complete toileting in the daytime and evening independently with the use of a walker. She stated if she awakens at 2 or 3 o'clock in the morning, she is at risk for falling due to issues with her knees and ankles. She also said her PCA had told her about the availability of a commode.

Findings of Fact

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

1. Appellant is a female MassHealth member in her late [REDACTED] who lives in the community. (Ex. 7).
2. The appellant's medical diagnoses include multiple joint pain, history of morbid obesity, history of bipolar disorder, anxiety and depression. (Testimony; Ex. 4, pp. 7-8).
3. Appellant's personal care management (PCM) agency, Northeast Arc Inc., submitted a prior authorization request for PCA services requesting 30 hours/45 minutes per week. MassHealth modified appellant's request for PCA services to 15 hours/15 minutes day/evening hours per week. (Testimony; Ex. 4, p. 2).
4. The appellant filed this appeal in a timely manner on May 27, 2024. (Ex. 2).
5. There is no aid pending as member declined. (Ex. 6).
6. At hearing, the parties were able to resolve disputes related to PCA assistance with Laundry, Housekeeping and Shopping. (Testimony).
7. The appellant seeks time for PCA assistance with Dressing as follows: 10 minutes a day, 7 days a week. (Testimony; Ex. 4, p. 18). MassHealth modified the requested time for Dressing to 7 minutes a day, 7 days a week. (Testimony).
8. The appellant seeks time for PCA assistance with Toileting, Bladder, night as follows: 7 minutes an episode, 2 episodes a night. (Testimony; Ex. 4, p. 20). MassHealth modified the requested time for Toileting at night to 0. (Testimony).
9. Appellant is independent for toileting in the daytime and evening. (Ex. 4, p. 20).

10. When appellant first came into the PCA program in 2022, she was on the same medications she is on now but was independent with bladder, bowel and nighttime toileting. (Testimony).

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

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 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.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) 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. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

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.

See 130 CMR 422.412 (emphasis added).

The appeal is dismissed as to the following ADL's. At hearing, the parties were able to resolve any disputes related to PCA assistance with Laundry. The parties agreed on 45 minutes a week for this task. (Testimony). Regarding Housekeeping, the parties agreed to 45 minutes for this task. (Testimony). The parties agree on the time for Shopping at 60 minutes a week. (Testimony).

Dressing:

Appellant requested 10 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified this to 7 minutes an episode, 1 episode a day, 7 days a week. The MassHealth rep stated the time requested was longer than ordinarily required for someone with appellant's physical needs. MassHealth stated appellant was observed to be able to ambulate independently from room to room so there is no reason appellant cannot retrieve her own clothes before dressing. (Ex. 4, p. 11-12). The MassHealth rep noted appellant is independent with oral care (Ex. 4, p. 17) and independent with eating. (Ex. 4, p. 19). Appellant is minimum assist with Toileting and can complete toileting tasks during the day. (ex. 4, p. 20). The PCA can assist appellant with dressing.

Appellant stated that on the day she was observed for the evaluation, it was a good day for her to be able to move around. She stated since the evaluation she has torn her rotator cuff and she needs help putting a shirt on. Appellant stated she did not have the rotator cuff injury when she was evaluated.

I find appellant has not met her burden for Dressing time. The record reflects she can ambulate on her own, she can use her hands and arms to toilet and complete oral care on her own. It is not unreasonable for appellant to retrieve her own clothes for this task. Time is allotted for the PCA to assist appellant in dressing, therefore, the PCA can help appellant with any physical issue due to a torn rotator cuff. If appellant believes she needs more time for this task, she can request an adjustment by her PCM agency. Based on the record, appellant's request for additional time for this task is denied.

Toileting (Bladder care, night):

Appellant requested 7 minutes an episode, 2 episodes a night. MassHealth modified this to 0 time. The MassHealth nurse cited the documents in evidence that show appellant is independent with toileting during the day. (Testimony; Ex. 4, p. 20). The nurse stated the request for nighttime toileting hours appeared to be because appellant has a fear of falling at night due to medications she was taking. The nurse testified that when appellant first came into the program in 2022, appellant was on the same medications but was independent with bladder, bowel and nighttime toileting. (Testimony). The nurse stated the request for PCA in the nighttime is a non-covered service because it is considered assistance provided in the form of cueing, prompting, supervision, guiding, or coaching. The nurse also stated that under medical necessity, there is a less costly 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. The nurse stated appellant could use a bedside commode at night and MassHealth will pay for a commode.

Appellant admitted when asked she does complete toileting in the daytime and evening independently with the use of a walker. She stated if she awakens at 2 or 3 in the morning, she is at risk for falling due to issues with her knees and ankles. She also said her PCA had told her about the availability of a commode.

Appellant's request for Toileting, Bladder care, night is denied for several reasons. First, appellant states a risk of falling at night due to medication use. However, there was credible testimony, undisputed by appellant, that she was on these same medications in the past and at that time she was independent with bladder, bowel and nighttime. Secondly, it is not medically necessary because there is a less costly medical service in the form of a bedside commode. Appellant stated she had heard about the possibility of the use of a commode from her PCA. Lastly, the request for PCA services at night is a non-covered service. Appellant expresses a fear of falling at night. In addition to this be speculative, the PCA would be providing assistance in the form of cueing, prompting, supervision, guiding, or coaching. This is a non-covered service. (130 CMR 422.412). Appellant's request for time for this task is denied.

In conclusion, as the parties have agreed to time for Laundry, Housekeeping and Shopping, that part of the appeal is dismissed. Regarding Dressing and Toileting, Bladder Care, night, appellant has not met her burden and this part of the appeal is denied.

Order for MassHealth

Implement the adjustments to PCA time for laundry, housekeeping, and shopping as agreed at hearing.

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.

Thomas Doyle
Hearing Officer

Board of Hearings

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