

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2410342
Decision Date:	9/13/2024	Hearing Date:	08/07/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Robin Brown, OTR/L, Optum

Interpreter:
Spanish



*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:	Personal Care Attendant Services
Decision Date:	9/13/2024	Hearing Date:	08/07/2024
MassHealth's Rep.:	Robin Brown, OTR/L, Optum	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South	Aid Pending:	No

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30 and the rules and regulations promulgated thereunder.

Jurisdiction

Through a notice dated 06/24/2024, MassHealth informed the appellant that it denied her request for authorization of personal care attendant (PCA) services because she does not have documented need for assistance with at least two activities of daily living (ADLs) (130 CMR 420.001; Exhibit 1). The appellant filed this appeal with the Board of Hearings in a timely manner on 07/01/2024 (130 CMR 610.015(B); Exhibit 2).

Action Taken by MassHealth

MassHealth denied the appellant's request for PCA services.

Issue

Was MassHealth correct in denying the appellant's request for PCA services?

Summary of Evidence

MassHealth was represented by a licensed occupational therapist employed by Optum, the

contractor that makes the PCA decisions for MassHealth. The appellant represented herself in these proceedings. All parties appeared telephonically. Exhibits 1-4 were entered into the hearing record.

The MassHealth representative testified that on 06/13/2024, a prior authorization request (PA) for PCA services was submitted on the appellant's behalf by her PCA provider, [REDACTED] (Provider). In the PA request, the provider requested 22:30 hours of day/evening PCA assistance and 2 daily hours of nighttime attendant services for a period of one year. On 06/24/2024, MassHealth determined that the appellant does not have documented need for assistance with at least two activities of daily living (ADLs), and therefore denied the request for PCA services.

According to the documentation submitted by the PCA provider with the PA, the appellant is in her mid-40's, with diagnoses that include arthritis of the spine, status post back surgery and hand tendon, Type 2 Diabetes Mellitus, hypertension, depression, anxiety, and numbness in her legs. She lives alone in the community in a second-floor apartment. She attends occupational therapy twice per week.

As part of this initial evaluation, a report was submitted from the appellant's occupational therapist. According to the occupational therapist, the appellant would benefit and become independent with activities of daily living (ADLs) if she were to use adaptive devices like a bed buddy, tub transfer bench, long handled shoehorn, and a sock-aid.

During the evaluation, the appellant was observed to use a tube of Chap-stick, indicating that she can use her fine motor skills. Additionally, she was observed using her wallet to take out a small, folded piece of paper. She can ambulate independent using a straight cane. The appellant uses a standard bed, and she is able to transfer in and out of bed independently. In her bathroom is a tub-style shower. Although she reports she is not able to lift her legs to enter/exit the shower, she declined to demonstrate to the evaluator the assistance she requires.

The MassHealth representative testified that the documentation shows the appellant would be independent with bathing if she were to use a tub transfer bench and a grab bar in the shower.

For dressing and undressing, the MassHealth representative testified that the appellant is able to put on a shirt over her head. She appears to have complete upper body range of motion and can independently complete all upper body dressing tasks. The appellant reports that she is not able to bend for lower body dressing because of a wound from a surgery in 2022 that "feels like it is opening."

The report states the appellant is able to prepare simple meals. She reports difficulty lifting or putting things in the oven. She also reports needing assistance with laundry, shopping and housekeeping due to back pain.

Optum, after reviewing the PA request for PCA services, deferred the request back to the provider

with a request for information regarding whether the appellant requires PCA assistance with at least 2 ADLs. The provider responded that the appellant would be increase her independence with ADLs if she would obtain the durable medical equipment suggested. The Optum representative testified that she believes all the recommended assistive devices mentioned above can be obtained from MassHealth. Because the adaptive equipment is a less costly alternative to MassHealth, the request for PCA assistance was denied.

The appellant appeared at the fair hearing telephonically and testified with the assistance of a Spanish-language interpreter. She testified that she lives on the first floor of an apartment and has to climb five stairs to enter. She uses a can to walk and she reports that she “can handle five steps.”

The appellant testified that she “fell in the bathroom” last week while entering the bathtub. She stated she cooks “a little,” but cannot carry things to do cooking. She has burned her hands multiple times. Her legs are numb from the waist down. As a result of a recent back surgery, the appellant has screws and plates in her back, causing her stress when she bends forward. In bed, the appellant reports that she has to move her body “from side to side” because her “spine is stuck.” Her back pain is “chronic.”

Findings of Fact

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

1. The appellant is a MassHealth member (Testimony; Exhibit 4).
2. The appellant is in her 40's and she lives independently in the community. Her primary diagnoses include arthritis of the spine, status post back surgery and hand tendon, Type 2 Diabetes Mellitus, hypertension, depression, anxiety, and numbness in her legs. She lives alone in the community in a second-floor apartment. She attends occupational therapy twice per week. (Testimony; Exhibit 4).
3. On 06/13/2024, a prior authorization request (PA) for PCA services was submitted on the appellant's behalf by her PCA provider, Tempus Unlimited, Inc. (Provider). In the PA request, the provider requested 22:30 hours of day/evening PCA assistance and 2 daily hours of nighttime attendant services for a period of one year (Testimony; Exhibit 4).
4. On 06/24/2024, MassHealth determined that the appellant does not have documented need for assistance with at least two activities of daily living (ADLs), and therefore denied the request for PCA services (Testimony; Exhibits 1 and 4).
5. A timely appeal was filed by the appellant on 07/01/2024 (Exhibit 2).

6. A fair hearing was held before the Board of Hearings on 08/07/2024 (Exhibit 3).
7. According to the appellant's PCA provider and a report from her occupational therapist, the appellant would be independent with her activities of daily living if she had assistive devices for bathing, dressing and to get in and out of bed.

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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 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; 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 agency include, but are not limited to, health care reasonably known by the provider, or identified by the MassHealth agency 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/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.

The type of PCA services available are described in 130 CMR 422.410 below:

- (A) Activities of Daily Living (ADLs). 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/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 (IADLs). 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) Determining the Number of Hours of Physical Assistance. 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.

(Emphasis added.)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass.

App. Ct. 333 , 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386 , 390 (1998).

The appellant requested personal care attendant (PCA) services from MassHealth. The appellant requested assistance with various ADLs and instrumental activities of daily living (IADLs). Her provider noted that the appellant does not have the recommended durable medical equipment and assistive devices that would allow her to perform the ADLs. MassHealth denied the request for PCA time based on its review of the documentation and its determination that the appellant does not need assistance with at least 2 activities of daily living (ADLs).

MassHealth presented testimony that the appellant can be assisted with “tools,” in the form of durable medical equipment, which is a less costly alternative to PCA services. The MassHealth representative testified that if the appellant had a shower chair and a grab bar in the shower, she could greatly reduce his risk of falls. Additionally, she could use a long shoehorn and a “grabber” to help herself get dressed and undressed. A stool or bench can be used to help her trim her toenails. A rail near the bed would allow her to get into and out of bed. Even though the appellant’s PCA provider and occupational therapist agreed that she can become more independent with ADL’s with durable medical equipment, the appellant confirmed she had not considered any of the above recommendations.

MassHealth determination that the appellant can live more independently if she has some or all of the above “tools,” is credible and supported by the facts in the hearing record and the regulations. Any assistance the appellant may need is explicitly not covered, as it is assistance in the form of cueing, prompting, supervision, guiding, or coaching. MassHealth correctly determined the appellant does not have a documented need for assistance with 2 or more ADLs. MassHealth correctly denied the appellant’s PA. Accordingly, 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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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