

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]
[REDACTED]
[REDACTED]

Appeal Decision:	Dismissed in Part; Remand	Appeal Number:	2410463
Decision Date:	08/20/2024	Hearing Date:	08/08/2024
Hearing Officer:	Susan Burgess-Cox	Record Open to:	08/14/2024

Appearance for Appellant:

[REDACTED]

Appearance for MassHealth:

Donna Burns



*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; Remand	Issue:	Prior Authorization; PCA Services
Decision Date:	08/20/2024	Hearing Date:	08/08/2024
MassHealth's Rep.:	Donna Burns	Appellant's Rep.:	Guardian
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 June 27, 2024, MassHealth denied the appellant's request for Personal Care Attendant Services as the documentation submitted did not meet the Prior Authorization submission requirements. (130 CMR 422.000; Exhibit 1). The appellant's guardian filed a timely appeal on July 5, 2024. (130 CMR 610.015; Exhibit 2; Exhibit 3). Denial of assistance is valid grounds for appeal. (130 CMR 610.032).

Issue

Whether MassHealth was correct in denying the appellant's request for personal care services. (130 CMR 422.410).

Summary of Evidence

The appellant is under the age of 65. MassHealth received a prior authorization for personal care attendant (PCA) services. The appellant has received PCA services in the past and underwent a re-evaluation. At the time of the assessment, the appellant was living in a residential group home. The time requested for PCA services was for when the appellant goes to his family's home on the weekends. (Testimony; Exhibit 5). The request was for 57.0 hours each week. (Testimony; Exhibit

5). MassHealth denied the request as they determined that the documentation submitted did not meet prior authorization submission requirements. (Testimony; Exhibit 1; Exhibit 5). In the notice on appeal, MassHealth cites the regulations at 130 CMR 450.303 as the basis of their decision. (Exhibit 1). This regulation states that a provider must submit all prior-authorization requests in accordance with the MassHealth agency's instructions.

The MassHealth representative testified that the agency needs documentation from the residential group home regarding the time that the appellant leaves the group setting. (Testimony; Exhibit 5). The MassHealth representative testified that the submission from the Personal Care Management (PCM) Agency states that the appellant "sometimes" goes to his family's house on the weekends. (Testimony; Exhibit 5). MassHealth determined that this was not sufficient to make a decision on the time requested for weekly PCA services as it was not clear if the services were consistent and provided each week. (Testimony; Exhibit 5). At hearing, the MassHealth representative did not note any other agency action regarding the time requested for PCA services. (Testimony; Exhibit 5).

At hearing, there was an extensive discussion between the parties regarding the time requested and what MassHealth would possibly approve based on the documents and information presented prior to and at hearing. (Testimony; Exhibit 5). The MassHealth representative acknowledged that the information presented on the day of the hearing would likely result in a dramatic decrease in the time requested. (Testimony; Exhibit 5). As noted above, MassHealth did not take any other action regarding the time requested for PCA services. As the issue on appeal involved the need for the agency to obtain documentation to meet the prior authorization submission requirements, the record was held open to provide the appellant's father with the opportunity to provide that documentation. (Exhibit 7).

During the record open period, the appellant's father produced a letter from the residential supervisor of the group home stating that the appellant's family will have the ability to take the appellant home every other Saturday and return the following Sunday. (Exhibit 8). In their response, MassHealth acknowledged receipt of a document necessary to complete the submission requirements for the prior authorization re-evaluation. (Exhibit 9). MassHealth also stated that "MassHealth agreed to approve 15 hours per week" and it will begin as soon as "the representative agrees to withdraw the appeal with the Board of Hearings". (Exhibit 9). Upon receipt of this submission, the appellant's representative agreed to withdraw the appeal. (Exhibit 10).

Findings of Fact

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

1. The appellant is under 65-years of age.

2. MassHealth received a prior authorization for personal care attendant (PCA) services.
3. The appellant has received PCA services in the past and underwent a re-evaluation.
4. At the time of the assessment, the appellant was living in a residential group home.
5. The time requested for PCA services was for when the appellant goes to his family's home.
6. The appellant requested 57.0 hours each week.
7. MassHealth denied the request as they determined that the documentation submitted did not meet prior authorization submission requirements.
8. MassHealth was seeking documentation from the residential group home regarding the time that the appellant leaves the group setting.
9. The submission from the PCM agency states that the appellant "sometimes" goes to his family's house on the weekends.
10. The documentation did not clearly state whether the services were consistent and provided each week.
11. During the record open period, the appellant's representative provided the necessary documentation.
12. As of the date of the hearing, MassHealth had not taken any further action on the prior authorization request.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.416, a Personal Care Management (PCM) agency must request prior authorization from MassHealth 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 as described in 130 CMR 503.007: Potential Sources of Health Care and 517.008: Potential Sources of Health Care. (130 CMR 422.416). All requests for prior authorization for PCA services must include the provider number of the Fiscal Intermediary selected by the PCM agency pursuant to 130 CMR 422.405(B) and 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: Prior Authorization. The regulations at 130 CMR 450.303 require a provider to submit all prior-authorization requests in accordance

with the MassHealth agency's instructions. (130 CMR 450.303). In this case, MassHealth determined that the PCM agency did not submit the prior authorization request in accordance with the agency's instructions. During the course of the appeal, MassHealth determined that the appellant submitted the documents necessary to complete the prior authorization request in accordance with the agency's instructions. (130 CMR 450.303). As the agency action on appeal is resolved, the appeal is dismissed in part. (130 CMR 610.035; 130 CMR 610.051).

MassHealth's proposal to adjust the request of 57 hours each week to 15 hours each week, conditioned on an action of the appellant's representative to withdraw the appeal was not appropriate. The agency has requirements to follow in making such a substantive, appealable action. Pursuant to 130 CMR 422.417(B), if MassHealth denies or modifies a prior authorization request for PCA services, MassHealth will send written notice to the member, the PCM agency, and the fiscal intermediary. (130 CMR 422.417(B)). The notice will state the reason for the denial or modification and will inform the member of the right to appeal and of the appeal procedure. (130 CMR 422.417(B)).

The fair hearing rules require that a notice concerning an intended appealable action must be timely as stated in 130 CMR 610.015 and adequate in that it must be in writing and contain:

- (1) a statement of the intended action;
- (2) the reasons for the intended action;
- (3) a citation to the regulations supporting such action;
- (4) an explanation of the right to request a fair hearing; and
- (5) the circumstances under which assistance is continued if a hearing is requested. (130 CMR 610.026(A)).

In this case, the notice on appeal does not include any reasons or citations beyond the need to provide documentation to meet the prior authorization submission requirements and that issue has been resolved. As MassHealth has not issued a notice regarding an action to modify the time requested for PCA services which would likely cite regulations at 130 CMR 422.410 (Activities of Daily Living and Instrumental Activities of Daily Living), 130 CMR 422.411 (Covered Services), 130 CMR 422.412 (Non-Covered Services) and 130 CMR 450.204 (Medical Necessity), this case is remanded to MassHealth to make a decision related to the regulations supporting such action. (130 CMR 450.303(A); 130 CMR 610.026(A)). The regulations do not allow the agency to require a member to withdraw an appeal on a separate action in order to proceed with a subsequent decision.

As noted above, this appeal is dismissed in part and remanded to ensure MassHealth takes appropriate action on their review of the completed prior authorization request.

Order for MassHealth

Rescind the notice issued on June 27, 2024 and issue a decision regarding the time requested for PCA services as the request meets the prior authorization submission requirements.

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

cc:

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