

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part Denied in part	Appeal Number:	2410602
Decision Date:	10/31/2024	Hearing Date:	09/13/2024
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



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:	PCA
Decision Date:	10/31/2024	Hearing Date:	09/13/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	██████
Hearing Location:	Quincy	Aid Pending:	Yes

Authority

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

Jurisdiction

Through notice dated June 24, 2024, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed for this appeal in a timely manner on July 5, 2024 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

The MassHealth representative testified that Appellant is currently in Aid Pending status with 77 hours/week due to an adjustment for eating assistance. On his last re-evaluation, Appellant was approved for 69.25 hours for the period on and between 8/28/2024 and 2/25/2025. The subject PA request was submitted to MassHealth on June 17, 2024 by Lifepath requesting 83 hours/week for one year.

The MassHealth representative testified that according to documentation submitted with the PA request, Appellant is an [REDACTED] male with primary diagnoses of: blindness, poor balance, herniated discs, history of CVA, OA, and numbness to his right hand.

MassHealth modified the request on June 24, 2024, approving 73.25 hours/week for one year. MassHealth modified 6 areas of requested assistance based on MassHealth regulations 130 CMR 422.410: Activities of Daily Living and Independent Activities of Daily Living and 130 CMR 450.204: Medical Necessity (A)(1)(2) and (B).

After exchanging testimony, Appellant agreed with the modifications made to time to assist with transfers. Masshealth restored time to assist with dressing and undressing as requested. The parties agreed to modify time to assist with repositioning to 2 minutes, 3 times per day, seven days per week and time to assist with eating to 15 minutes, 3 times per day, seven days per week. By the end of the hearing, only one modification remained in dispute: time to assist with foot soaks.

Foot Soaks:

Appellant requested 10 minutes, once per day, three days per week to assist with foot soaks. MassHealth denied all time to assist with foot soaks because there is no diagnosis to support the medical necessity for foot soaks. The evaluation indicates that foot soaks were merely “suggested” by Appellant’s PCP, but he did not prescribe them or otherwise indicate that they were “medically necessary”.

Appellant testified that the foot soaks are needed to help reduce swelling in his feet as well as to soften his toenails and the skin on his feet. Appellant stated that he alternates his feet from warm to cold water during the soaks.

In response, the Masshealth representative testified that swelling is not relieved by foot soaks, but rather by Appellant taking his prescribed furosemide medication and wearing his prescribed compression stockings for which MassHealth approved PCA time to administer. The MassHealth representative also noted that being in a seated position, as one would expect during a foot soak, would not aid in reducing swelling of the lower extremities.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant is currently in Aid Pending status with 77 hours/week of PCA time due to an adjustment for eating assistance.
2. On his last re-evaluation, Appellant was approved for 69.25 hours for the period on and between 8/28/2024 and 2/25/2025.
3. The subject PA request was submitted to MassHealth on June 17, 2024 by Lifepath requesting 83 hours/week for one year.
4. According to documentation submitted with the PA request, Appellant is an [REDACTED] male with primary diagnoses of: blindness, poor balance, herniated discs, history of CVA, OA, and numbness to his right hand.
5. MassHealth modified the request on June 24, 2024, approving 73.25 hours/week for one year.
6. MassHealth modified 6 areas of requested assistance.
7. After exchanging testimony, Appellant agreed with the modifications made to time to assist with transfers.
8. After exchanging testimony, Masshealth restored time to assist with dressing and undressing as requested.
9. The parties agreed to modify time to assist with repositioning to 2 minutes, 3 times per day, seven days per week and time to assist with eating to 15 minutes, 3 times per day, seven days per week.
10. By the end of the hearing, only one modification remained in dispute: time to assist with foot soaks.
11. Appellant requested 10 minutes, once per day, three days per week to assist with foot soaks.
12. MassHealth denied all time to assist with foot soaks because there is no diagnosis to support the medical necessity for foot soaks.

13. Foot soaks were merely “suggested” by Appellant’s PCP, but he did not prescribe them or otherwise indicate that they were “medically necessary”.
14. Appellant seeks the foot soaks to help reduce swelling in his feet as well as to soften his toenails and the skin on his feet.
15. Lower extremity swelling is not relieved by foot soaks.
16. Appellant taking his prescribed furosemide medication and wearing his prescribed compression stockings for which MassHealth approved PCA time to administer will help to reduce swelling of the lower extremities.
17. Being in a seated position, as one would expect during a foot soak, would not aid in reducing swelling of the lower extremities.
18. Assistance for time with grooming includes assistance with applying lotions (Exhibit B, pages 18 and 19).

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision’s invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)).

Foot Soaks: Modifications upheld

On this record, medical necessity for foot soaks has not been established.

130 CMR 450.204: Medical Necessity:

The MassHealth agency does 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

The request for foot soaks fails subpart (A)(1) because it has not been prescribed by Appellant's physician and because Appellant has failed to show how foot soaks would contribute to alleviating his feet swelling. The professional medical opinion of the registered nurse who represented Masshealth was persuasive, especially as it was not countered by Appellant. Foot soaks will not aid in reducing Appellant's feet swelling. Moreover, Appellant already has treatments in place to reduce his feet swelling – his existing compression socks and his diuretic medication. These would both serve as less-costly alternatives to the foot soaks given that they are already in place; therefore, the need for feet soaks also fails subpart (A)(2) of the medical necessity regulation. Likewise, the need for feet soaking to soften Appellant's toenails and skin fails subpart (A)(2) insofar as he has been approved for PCA assistance with grooming which includes applying lotions which constitutes a less costly alternative to the foot soaks.

On this record, Appellant has failed to meet his evidentiary burden on the matter of MassHealth's denial of PCA time to assist with foot soaks; the appeal on that matter is DENIED.

The appeal is APPROVED as to restoring time to assist with dressing and undressing as requested; modifying time to assist with repositioning to 2 minutes, 3 times per day, seven days per week and time to assist with eating to 15 minutes, 3 times per day, seven days per week – as agreed to at hearing.

Order for MassHealth

Remove AID PENDING. Restore time to assist with dressing and undressing as requested; modify time to assist with repositioning to 2 minutes, 3 times per day, seven days per week and time to assist with eating to 15 minutes, 3 times per day, seven days per week.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact Optum. If you have any problems with implementing 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.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

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