

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2411593
Decision Date:	10/1/2024	Hearing Date:	08/26/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Donna Burns, RN for 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:	Approved	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	10/1/2024	Hearing Date:	08/26/2024
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Pro se
Hearing Location:	Remote	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 July 19, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.410(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on July 25, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

The appeal issue is whether MassHealth acted pursuant to 130 CMR 422.000, et. seq; and 130 CMR 450.204, in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is a MassHealth member under the age of 65. MassHealth was represented by a clinical appeals reviewer and nurse for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from a primary diagnosis of spinal stenosis with neurogenic claudication and secondary diagnoses of bipolar disorder, chronic back pain, degenerative scoliosis, and more. On July 10, 2024, MassHealth received a prior authorization request on the appellant's behalf for renewal of services, requesting 49 hours and 45 minutes of PCA assistance per week. On July 19, 2024, MassHealth modified the request and approved the appellant 44 hours and 45 minutes of weekly assistance with dates of service from July 26, 2024, to July 25, 2025.

The only modification made was in the area of transportation to medical appointments. MassHealth approved the appellant for 273 minutes a week for assistance with driving her to most of her medical appointments but denied any assistance with transportation to her [REDACTED] [REDACTED] for which she requested an additional 299 minutes.¹ The MassHealth representative explained that this time was denied because these treatments are not a MassHealth covered service, because Medicare is paying for the appellant's infusions, and because the provider in question is not a MassHealth provider. She noted that the notice does state that this time was denied due to being considered a social service, though she agreed that her testimony was a more accurate reflection of the reason for the denial.

The appellant provided documentation from her psychiatrist, her primary care nurse practitioner, and her clinical psychologist, all of whom opined that [REDACTED] are the best and most effective treatment for the appellant's [REDACTED] [REDACTED] as many other treatments have been tried and failed. Her [REDACTED] are provided at a clinic roughly an hour from her home under the supervision of a physician. She testified that the protocol for the treatments is to receive them two times per week. The appellant reported that her physical diagnoses prevent her from driving herself to any appointments, as she must travel lying down in the rear of her vehicle due to her spinal condition.

¹ The total amount of time requested for assistance with transportation to medical appointments was 572 minutes per week. See Exhibit 5 at 60. That request includes 12480 minutes per year to the [REDACTED] clinic, which, when divided by 52.14 weeks, equals 240 minutes. *Id.* However, MassHealth reported that the only modification was made for transportation to the [REDACTED] clinic. Therefore, this decision will decide whether the 572 minutes should be imposed in full, or whether MassHealth acted within its discretion in approving the appellant for only 273 minutes per week.

Findings of Fact

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

1. The appellant is an adult MassHealth member under the age of 65 who is currently receiving services through MassHealth's PCA program. Testimony, Exhibit 1, Exhibit 4.
2. On July 10, 2024, MassHealth received a prior authorization request for renewal of the appellant's PCA services for a total of 49 hours and 45 minutes of weekly assistance. Testimony, Exhibit 5 at 35. The appellant requested 572 total minutes of weekly assistance for transportation to medical appointments, including time driving to a [REDACTED] clinic roughly an hour from the appellant's home. Testimony, Exhibit 5 at 60.
3. On July 17, 2024, MassHealth modified the request and approved the appellant for 44 hours and 45 minutes of weekly PCA assistance with dates of service from July 26, 2024, to July 24, 2025. Testimony, Exhibit 1, Exhibit 5 at 35.
4. MassHealth approved the appellant for 273 weekly minutes for PCA assistance with transportation to her medical appointments. Testimony, Exhibit 1. The only modification made to the appellant's prior authorization request was in denying any assistance with transportation to her [REDACTED]. Testimony, Exhibit 1.
5. The [REDACTED] are used to treat the appellant's diagnoses of [REDACTED] [REDACTED] and the treatment is supported by a variety of the appellant's medical providers. Testimony, Exhibit 6 at 11-18. She receives those treatments at a clinic under the supervision of a physician. Exhibit 6 at 1-2.
6. The appellant is unable to drive herself to these appointments due to a spinal condition which requires her to be transported laying on her back. Testimony, Exhibit 6 at 1-2.
7. The protocol for the appellant's [REDACTED] treatments is to receive them twice per week. Testimony, Exhibit 5 at 60.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (1) The PCA services are authorized for the member in accordance with 130

CMR 422.416.

(2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.²

(3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).

(4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...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.

130 CMR 450.204(A)-(B).

Regarding transportation, the PCA regulations provide that IADLs are “those specific activities described in 130 CMR 422.410(B) that are instrumental to the care of the member’s health and are performed by a PCA, such as...transportation to medical providers.” 130 CMR 422.402 (Definition of Instrumental Activities of Daily Living (IADLs)). 422.410(B) lists specific definitions of IADLs and includes transportation as “accompanying the member to medical providers.” *Id.* at 422.410(B)(3). The regulations make no other reference to transportation regulations (130 CMR 407.001 et. al).

² ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

The PCA program specifically lists noncovered services as follows:

- (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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

130 CMR 422.412.

In this case, MassHealth argues that the PCA program pays only for medical transportation to services covered by MassHealth and/or to MassHealth providers. MassHealth contends that the appellant's [REDACTED] are not a MassHealth covered service³, the clinic at which she receives the treatment is not a MassHealth provider, and therefore the program will not provide assistance for her PCA to transport her to those appointments. However, this position is inconsistent with the regulations, as the requirements alluded to by MassHealth are not contained within them. The only requirement contemplated by the PCA regulations is that the transportation be to a medical provider. There is no prerequisite that the medical provider must be a MassHealth provider, nor that the purpose of the visit be for a MassHealth-covered service.

The appellant credibly stated that she receives her injections at a clinic under the supervision of a physician, twice per week, at a facility located approximately an hour from her home. Multiple of her medical providers (a psychiatrist, a clinical psychologist, and a nurse practitioner) stated that she has been receiving this treatment and support its use to combat her mental health diagnoses. Thus, I find that the appellant has met her burden of proof that she is entitled to PCA assistance

³ Though I make no finding as to the factuality of this argument, it should be noted that a particular antidepressant [REDACTED] is on the MassHealth drug list. See <https://mhdل.pharmacy.services.conduent.com/MHDL/pubtheradetail.do?id=1787&drugId=993>

for transportation to her [REDACTED] appointments. MassHealth erred its July 19, 2024, modification of the appellant's requested PCA assistance for 572 total minutes per week for transportation to medical appointments.

For the foregoing reasons, this appeal is hereby approved.

Order for MassHealth

Modify the July 19, 2024 notice and approve the appellant for PCA assistance to transportation to her [REDACTED]. Her total weekly assistance for transportation to medical appointments should be 572 minutes, retroactive to July 26, 2024.

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.

Mariah Burns
Hearing Officer
Board of Hearings

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