

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Denied in Part	Appeal Number:	2412504
Decision Date:	11/01/2024	Hearing Date:	09/10/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, 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:	Dismissed in Part; Denied in Part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	11/01/2024	Hearing Date:	09/10/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
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 August 6, 2024, MassHealth modified the appellant's prior authorization request for an adjustment of personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on August 9, 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 adjustment of personal care attendant (PCA) services.

Issue

The appeal issue is whether MassHealth acted within the scope of the regulations in modifying the appellant's prior authorization request for adjustment of PCA services.

Summary of Evidence

The appellant is a MassHealth member over the age of 65 who currently receives PCA services through MassHealth. She was assisted at the hearing by her PCA. MassHealth was represented by a clinical appeals reviewer and registered 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:

The appellant suffers from diagnoses of osteoarthritis, rheumatoid arthritis, osteoporosis, and chronic pain syndrome.¹ She was previously approved for 45 hours and 30 minutes of weekly PCA services with dates of service from January 13, 2023, to January 12, 2024. The appellant's personal care management (PCM) agency, [REDACTED], filed three different extensions to the appellant's services, the last of which expired on May 11, 2024. [REDACTED] did not submit a new re-evaluation prior authorization request until July 9, 2024, causing an 8.71 week gap in the appellant's PCA services.

On July 12, 2024, MassHealth approved the appellant's re-evaluation prior authorization request of 4 hours of PCA services per week with dates of service from July 12, 2024, to July 11, 2025. On July 29, 2024, [REDACTED] submitted an adjustment request for a total of 34 hours and 30 minutes of weekly PCA assistance for the appellant. On August 6, 2024, MassHealth modified that request to approve the appellant for a total of 32 hours and 15 minutes of weekly assistance with dates of service from July 29, 2024, to July 11, 2024.

The appellant expressed concern about the gap in her PCA services and asked that her currently approved hours be applied retroactive May 11, 2024, when her previous prior authorization period expired. The MassHealth representative reported that this was not possible because [REDACTED] did not submit a prior authorization request for that period, and MassHealth cannot approve PCA assistance when prior authorization has not been requested. The MassHealth representative did agree to backdate the appellant's currently approved 32 hours and 15 minutes of PCA assistance to July 12, 2024 due to [REDACTED] error in filing the July 9 prior authorization request and their refusal to pay the appellant's PCA despite their mistake.²

Regarding the current notice on appeal modifying the appellant's adjustment request, MassHealth modified the appellant's assistance in the areas of assistance with transfers, dressing and undressing, and meal preparation.

¹ This is not an extensive list of the appellant's conditions or symptoms, which can be found at Exhibit 5 at 14-15 and are hereby incorporated by reference.

² The MassHealth representative and the Board of Hearings provided the appellant instructions, via email, of how to file a complaint regarding the actions of [REDACTED] in this matter along with the MassHealth PCM Agency List should she wish to change agencies. See Exhibit 7.

Mobility Transfers

The appellant requested 3 minutes, 6 times per day, 4 days per week and 3 minutes, 3 times per day, 3 days per week for assistance with transferring into and out of bed and chairs. MassHealth originally approved no time for this task, but, with the appellant's adjustment request, modified the time approved to 1 minute, 6 times per day, 4 days per week and 1 minute, 3 times per day, 3 days per week. The MassHealth representative reported that this was modified because the time requested is longer than ordinarily required for someone with the appellant's needs. The appellant testified that she currently does not need assistance getting into and out of bed, but needs supervision when she's walking or using her rollator due to her poor balance.

Dressing/Undressing

The appellant's documentation requested 12 minutes per day, 4 days per week for dressing and 8 minutes per day, 7 days per week for undressing. At the hearing, she also requested that dressing be increased to 7 days per week. MassHealth originally approved 10 minutes per day, 2 days per week for dressing and 6 minutes per day, 2 days per week for undressing. After the appellant's adjustment request, MassHealth modified that approved time to 10 minutes per day, 4 days per week for dressing and 6 minutes per day, 7 days per week for undressing. MassHealth modified this request because the amount of time per instance is longer than ordinarily required for someone with the appellant's needs. The amount of time per week was originally modified because the appellant receives 21 weekly hours of homemaker and personal care services through Springwell, a covered service the appellant receives through MassHealth. The agency considered the request to be duplicative of the appellant's services she receives through Springwell. The appellant testified that she doesn't currently have any workers from Springwell come to her home, but she provided her prior authorization approval letter from MassHealth, which is dated July 2, 2024.

The MassHealth representative explained that dressing cannot be increased to 7 days per week because there is no prior authorization request for those three extra days. The appellant further testified that she is sometimes able to dress herself, but that she is limited by severe shoulder pain. She reported requiring assistance with pulling up pants, putting shirts on, and although she is able to put her own shoes on, she is unable to tie them.

Meal Preparation

The appellant's documentation requested a total of 280 hours per week for PCA assistance with meal preparation. MassHealth originally approved her for 120 hours per week but increased that to 160 minutes with her adjustment request. MassHealth reported that this modification was made because the service was largely duplicative of the assistance the appellant receives through Springwell, which is already covered by MassHealth. The appellant testified that she needs assistance with meal preparation at least 5 days per week. She reported being able to make

herself a smoothie for breakfast and she has a protein bar for lunch. However, she testified that she needs PCA assistance for dinner preparation at least 60 minutes per day on two days per week.

Findings of Fact

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

1. The appellant is an adult MassHealth member over the age of 65 who suffers from diagnoses of osteoarthritis, rheumatoid arthritis, osteoporosis, and chronic pain syndrome. Exhibit 4, Exhibit 5 at 14-45. She was previously approved for 45 hours and 30 minutes of weekly PCA services with dates of service from January 13, 2023, to January 12, 2024. Testimony.
2. The appellant's PCM, [REDACTED], filed three different extensions to the appellant's services, the last of which expired on May 11, 2024. Testimony. [REDACTED] did not submit a new re-evaluation prior authorization request until July 9, 2024, causing an 8.71 week gap in the appellant's PCA services. Testimony.
3. The July 9, 2024, prior authorization request for re-evaluation of services submitted by [REDACTED] requested only 4 hours of PCA assistance for the appellant, which MassHealth approved in full on July 12, 2024, with dates of service from July 12, 2024, to July 11, 2025. Testimony, Exhibit 1, Exhibit 5 at 40.
4. On July 29, 2024, [REDACTED] submitted a prior authorization adjustment request for PCA assistance on the appellant's behalf, seeking a total of 34 hours and 30 minutes of PCA assistance. Testimony, Exhibit 1, Exhibit 5 at 5.
5. On August 6, 2024, MassHealth approved the appellant for a total of 32 hours and 15 of PCA assistance with dates of service from July 29, 2024, to July 11, 2025. Exhibit 1. After the hearing, MassHealth agreed to back date the start date for services to July 12, 2024. Testimony.
6. MassHealth made specific modifications in the areas of transfers, dressing/undressing, and meal preparation. Exhibit 1.
7. The appellant requested 3 minutes, 6 times per day, 4 days per week and 3 minutes, 3 times per day, 3 days per week for assistance with transferring into and out of bed and chairs. Exhibit 5 at 2. MassHealth originally approved no time for this task, but, with the appellant's adjustment request, modified the time approved to 1 minute, 6 times per day, 4 days per week and 1 minute, 3 times per day, 3 days per week. Testimony, Exhibit 1, Exhibit 5 at 2. The appellant currently does not need assistance getting into and out of bed but needs supervision when she's walking or

using her rollator due to her poor balance. Testimony. MassHealth modified the request because it is longer than typically approved for someone with the appellant's needs. Testimony, Exhibit 1.

8. The appellant's documentation requested 12 minutes per day, 4 days per week for dressing and 8 minutes per day, 7 days per week for undressing. Exhibit 5 at 2. At the hearing, she also requested that dressing be increased to 7 days per week. Testimony. MassHealth originally approved 10 minutes per day, 2 days per week for dressing and 6 minutes per day, 2 days per week for undressing. Exhibit 5 at 2. After the appellant's adjustment request, MassHealth modified that approved time to 10 minutes per day, 4 days per week for dressing and 6 minutes per day, 7 days per week for undressing. Exhibit 1. The appellant is sometimes able to dress herself, but she is limited by severe shoulder pain. She requires assistance with pulling up pants, putting shirts on, and although she can put her own shoes on, she is unable to tie them. Testimony. MassHealth modified this request because it is longer than typically approved for someone with the appellant's needs. Testimony, Exhibit 1.

9. The appellant's documentation requested a total of 280 hours per week for PCA assistance with meal preparation. Exhibit 5 at 3. MassHealth originally approved the appellant for 120 hours per week of assistance but increased that to 160 minutes with her adjustment request. *Id.*, Exhibit 1. The appellant can make herself a smoothie for breakfast and she has a protein bar for lunch, but she needs PCA assistance for dinner preparation at least 60 minutes per day on two days per week. Testimony. MassHealth modified this request because it is largely duplicative of services the appellant receives through Springwell that is already covered by MassHealth. Testimony, Exhibit 1.

10. MassHealth has approved the appellant for coverage of 21 weekly hours personal care and homemaker services through Springwell, which provides some similar assistance to the PCA program. Testimony, Exhibit 5 at 53, Exhibit 6 at 53.

11. MassHealth has no prior authorization request on file for coverage of PCA services for the appellant from May 12, 2024, to July 12, 2024. Testimony.

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.³

(3) The member, as determined by the [Personal Care Management (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).

As part of the PCA program, MassHealth does not cover certain activities, including, but not limited to "medical services available from other MassHealth providers...assistance provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members." 130 CMR 422.412(B), (C) and (F).

Members who wish to renew their PCA services must comply with the following process:

³ 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).

To ensure the continuation of PCA services, PCM agencies must request prior authorization from the MassHealth agency at least 21 calendar days before the expiration date of the current prior authorization period. The PCM agency must include in its prior authorization request the documentation described in 130 CMR 422.416(A). The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior authorization request at least 21 calendar days prior to the expiration of the current prior authorization period. If the MassHealth agency does not receive the new prior authorization request at least 21 calendar days before the expiration date, the MassHealth agency may stop payment for PCA services after the expiration date.

130 CMR 422.416(C). A PCM agency is “a public or private agency or entity under contract with EOHHS to provide PCM functions” such as “submitting to the MassHealth agency all requests for prior authorization for PCA services in accordance with the [proper] procedures and timeliness...” *Id.* at 422.402 and 422.419(A)(6). In this case, the appellant’s PCM agency is [REDACTED] a MassHealth provider.

If a member is requesting an adjustment of their current PCA hours, they must submit a prior authorization request that includes the following:

- (1) a copy of the original prior authorization request and PCA evaluation;
- (2) a written summary of the specific adjustment requested that includes the reason for the adjustment and the specific ADLs or IADLs for which an increase or decrease in PCA services is being requested, including the number of units, the number of hours, and the duration of time for which the adjustment is being requested; and
- (3) a letter from the member’s physician, nurse practitioner, or physician assistant stating that the need for an adjustment in the member’s authorized number of hours of PCA services is a result of changes in the member’s medical condition, functional status, or living situation that affects the member’s ability to perform ADLs and IADLs without physical assistance. The letter must also describe these conditions. The letter must include the length of time for which the adjustment is required.

130 CMR 422.416(B).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth

agency's interpretation of its rules, policies and regulations." 130 CMR 610.085(A). The purpose of a fair hearing before the Board of Hearings is to allow "dissatisfied applicants, members, or nursing facility residents to have administrative review of certain *actions or inactions on the part of the MassHealth agency* and of determinations by a MassHealth managed care contractor." 130 CMR 610.001(A)(1) (Emphasis added).

For the following reasons, I find that I am without authority to approve the appellant's request to have her current PCA hours applied retroactively to her service termination date of May 10, 2024, because her gap in service was due to a lack of action taken by the appellant's PCM agency, [REDACTED], not because of any action or inaction on the part of MassHealth. Further, I find that the appellant has not demonstrated, by a preponderance of the evidence, that she is entitled to an adjustment of her PCA hours beyond what MassHealth has already approved.

Retroactivity of Hours

The appellant asks that her currently approved PCA hours be applied retroactively to her previous service termination date of May 10, 2024, because her PCA was not compensated for services that she provided between that date and June 12, 2024. MassHealth argues that this is not possible because [REDACTED] failed to file either a) an extension request for the appellant's previous services or b) a prior authorization request for a renewal/continuation of services, and MassHealth cannot provide services for a period for which a prior authorization request has not been submitted.

I agree with MassHealth's assessment to the extent that it argues that the failure of the appellant to have services from May 10 to June 12 of 2024 was not due to the action or inaction of the MassHealth agency, but one of its providers. The regulations make it clear that not only is the PCM responsible for submitting prior authorization requests to MassHealth, but the Board of Hearings only has the authority to issue decisions as they pertain to action or inaction on the part of MassHealth. Further, PCA services can only be provided subject to prior authorization. See 130 CMR 422.416 ("The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services."). MassHealth cannot act or fail to act on a prior authorization request that has not been submitted. For those reasons, I find that I am without authority to backdate the appellant's PCA services to May 10, 2024, as she requests.⁴

For those reasons, the appeal with respect to retroactivity of services is denied.

Assistance with Transfers

The appellant argues that her approved time for assistance with transferring into and out of bed and into/out of a chair should be increased from 1 minute per instance to 3 minutes. MassHealth

⁴ MassHealth agreed to approve the hours retroactive to July 12, 2024, when [REDACTED] finally submitted the appellant's PCA services renewal prior authorization request.

modified this request because the time requested for assistance is longer than ordinarily required for someone with the appellant's needs. The appellant testified that her PCA does not assist her with getting into and out of bed or into and out of a chair, but that her balance is extremely bad and that she needs supervision while ambulating. As the appellant did not provide information as to why she requires more time with transfers (in fact, she testified that she does not need any time for that task), her request to increase her approved time per instance is denied.

Assistance with Dressing/Undressing

The appellant requested two additional minutes per instance for both dressing and undressing, and she also asked that she be approved for dressing seven days per week. Because [REDACTED] requested only four days per week for dressing, no modification was made by MassHealth to the number of days for which dressing assistance may be provided. That request is therefore denied. With respect to the amount of time per day for dressing and undressing, the appellant reported that she needs assistance with putting on a shirt, pulling up her pants, and tying her shoes. While there is no reason to doubt this testimony, she did not explain how long this typically takes her, nor did she explain why the current amount of time is insufficient to meet her needs. For those reasons, the appellant did not show, by a preponderance of the evidence, that an increase to her assistance with dressing and undressing is medically necessary, and her request to increase that time is denied.

Assistance with Meal Preparation

The appellant requests an increase of her weekly PCA assistance with meal preparation from 160 minutes (approximately 23 minutes per day) to 280 minutes (40 minutes per day). MassHealth reported that this request was denied because it duplicates personal care and homemaker services the appellant receives through Springwell. Although the appellant states that she has not been receiving services from Springwell for some time, she provided a letter from Springwell verifying that she receives 21 hours of homemaking and personal services a week through their agency, which are provided by MassHealth. See Exhibit 6 at 53. Therefore, based on MassHealth's records, the appellant has been approved to receive these hours even if she does not take advantage of them. As the PCA program does not cover services available from other MassHealth providers, MassHealth acted appropriately in denying duplicative services through the PCA program. If the appellant no longer receives services through Springwell, she should provide documentation reflecting this change in her circumstances to MassHealth. Further, the appellant only testified to requiring 120 minutes of weekly meal preparation assistance, and she has been approved for 160. For those reasons, the appellant's request to increase her approved PCA assistance for meal preparation is denied.

To the extent that MassHealth has agreed to approve the appellant's currently approved PCA services retroactively to July 12, 2024, this appeal is hereby dismissed. As to all other issues discussed herein, the appeal is hereby denied.

Order for MassHealth

Backdate the appellant's currently approved PCA services retroactively to July 12, 2024, as agreed to at the 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.

Mariah Burns
Hearing Officer
Board of Hearings

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