

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in Part; Dismissed in Part	Appeal Number:	2412559
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:	Denied in Part; Dismissed 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 July 8, 2024, MassHealth modified the appellant's prior authorization request for 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 12, 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 within the scope of the regulations in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is a MassHealth member over the age of 65 who was assisted at the hearing by her daughter, who is also her PCA. 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:

The appellant suffers from diagnoses polyarthritis and diabetes with neuropathy. On July 3, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 21 hours and 45 minutes of PCA assistance per week. On July 8, 2024, MassHealth modified the request and approved the appellant for 19 hours and 45 minutes of weekly assistance with dates of service from July 10, 2024, to July 9, 2025.

Modifications were made in the areas of assistance with transfers, bathing, housekeeping, and lotion application. After the hearing, the parties agreed to the following modifications:

- **Transfer Assistance:** parties agree to 2 minutes, 2 times per day, 7 days per week to get into and out of bed and 1 minute, 4 times per day, 7 days per week to get into and out of chairs;
- **Bathing:** appellant accepts modification of 30 minutes per day.

Thus, after hearing, disputes remained over assistance with housekeeping and lotion application.

Housekeeping

The appellant requested 60 minutes per week for assistance with housekeeping. The MassHealth representative reported that this was modified because the appellant lives with other people, meaning that the PCA is responsible only for light cleaning of the appellant's sleeping space and bathroom. The appellant testified that she lives with her brother, his wife, and their two kids. She has her own bedroom and shares the bathroom with the other residents. She and her PCA both testified that the PCA cleans the appellant's bedroom every two days. They reported that it takes the PCA 20 minutes to change the sheets on her full/queen size bed three times per week, that she sweeps her room three times per week, and spends ten minutes mopping per week. They also testified that the appellant's floor is not dirtier than typical because of her eczema, but that her bed does require more frequent sheet changing because of it. Finally, they reported that cleaning the appellant's bathroom takes about 25 minutes.

Lotion Application

The appellant requested 4 minutes, 2 times per day, 7 days per week for assistance with lotion application. MassHealth modified this request to 3 minutes per day, largely because the prior

authorization request provides no indication that the appellant applies lotion two times per day. The appellant testified that she has eczema on her face and chest for which she applies cream twice per day. She explained that she is capable of doing it herself, but the cream once caused her discomfort that makes her afraid to apply it herself. Therefore, her PCA applies her lotion and cream for her.

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 rheumatic disorders of her mitral and aortic valves, epilepsy, and depression. Exhibit 4, Exhibit 5 at 8-9.
2. On July 3, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 21 hours and 45 minutes of PCA assistance per week. Testimony, Exhibit 5 at 34. On July 8, 2024, MassHealth modified the request and approved the appellant for 19 hours and 45 minutes of weekly assistance with dates of service from July 10, 2024, to July 9, 2025. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of transfers, bathing, housekeeping, and lotion application. Exhibit 1.
4. After the hearing, the parties agreed to the following modifications:
 - **Transfer Assistance:** parties agree to 2 minutes, 2 times per day, 7 days per week to get into and out of bed and 1 minute, 4 times per day, 7 days per week to get into and out of chairs;
 - **Bathing:** appellant accepts modification of 30 minutes per day.

Testimony.

5. The appellant requested 60 minutes per week for assistance with housekeeping. Exhibit 5 at 29. The appellant resides with her son, his wife, and their two children. The appellant has her own bedroom and shares a bathroom with the other residents of the apartment. She has eczema which requires more frequent changing of her bed sheets but does not otherwise affect the cleanliness of her bedroom. Testimony.
6. The appellant requested 4 minutes, 2 times per day, 7 days per week for assistance with lotion application. The appellant applies lotion and cream two times per day. She is physically capable of applying the cream to her face and chest, but her PCA assists her because the appellant is afraid to do it herself. Testimony.

7. MassHealth modified the appellant's housekeeping request because she resides with other family members who would be generally responsible for keeping common places clean. Testimony. MassHealth modified the appellant's lotion application request because there was no indication that she requires assistance with lotion application more than once per day. 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.¹
- (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

¹ 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).

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). When determining the appropriate amount of physical assistance required by a MassHealth member, the following assumptions:

(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.

...

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

130 CMR 422.410(C).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for assistance with transfers and bathing, the appeal with respect to those tasks has resolved and is hereby dismissed in part. MassHealth is ordered to modify the appellant’s approved hours to include the following:

- **Transfer Assistance:** 2 minutes, 2 times per day, 7 days per week to get into and out of bed and 1 minute, 4 times per day, 7 days per week to get into and out of chairs.

Thus, at issue in this case is whether the appellant met his burden of proof in establishing that she is entitled to more approved PCA time than MassHealth approved for assistance with housekeeping and lotion application. For the reasons stated herein, I find that she has not met this burden.

Housekeeping

The appellant argues that she requires 60 minutes of housekeeping assistance per week, despite the fact that she lives in a space that she shares with four other people. MassHealth correctly states that, because the appellant lives with family members, those family members are typically responsible for routine housekeeping for which they would benefit. See 130 CMR 422.410(C)(1). Therefore, MassHealth will only cover assistance with cleaning the appellant's bedroom and any bathroom mess caused by the appellant. The appellant's testimony of how long it takes to change her sheets and sweep and mop her floor strains credulity. If the space is being cleaned every day, then sweeping and mopping should take no longer than several minutes. She reported no extenuating circumstances that would require more cleaning of her space. Finally, I do not credit the assertion that it takes 20 minutes to change the sheets of a full/queen size bed. I find that the appellant has not demonstrated that she requires more PCA assistance with housekeeping than the 45 minutes that MassHealth has already approved. For those reasons, the appellant's appeal with respect to assistance with housekeeping is denied.

Lotion Application

Lotion application falls under the category of grooming, the definition for which can be found at 130 CMR 422.410(A)(3) and involves "physically assisting a member with bathing, personal hygiene, or grooming." In this case, the appellant testified that she is physically capable of applying her own lotion and cream to her face and chest, but that she is afraid to do it because of the feeling she gets on her hand. Based on this, I do not find that the appellant requires any other assistance than what MassHealth has approved for lotion application. The fact that she chooses not to apply cream to her face and chest does not mean that MassHealth is obligated to provide assistance for the task. If she possesses the physical ability to complete a particular task, the appellant cannot demonstrate that such a task meets the medical necessity requirement for PCA assistance. For those reasons, the appellant's appeal with respect to assistance with lotion application is denied.

For the foregoing reasons, the appeal is hereby denied in part and dismissed in part.

Order for MassHealth

Modify the appellant's approved PCA assistance to reflect the following hours, retroactive to the start date of service of July 10, 2024:

- **Transfer Assistance:** 2 minutes, 2 times per day, 7 days per week to get into and out of bed and 1 minute, 4 times per day, 7 days per week to get into and out of chairs.

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

