

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2413070
Decision Date:	10/29/2024	Hearing Date:	09/16/2024
Hearing Officer:	Christine Therrien		

Appearances for Appellant:



Appearance for MassHealth/Optum:
Kelly Rayen, R.N.



*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:	PCA services
Decision Date:	10/29/2024	Hearing Date:	09/16/2024
MassHealth/Optum Rep.:	Kelly Rayen, R.N.	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South - telephonic	Aid Pending:	Yes

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 8/16/24, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services. (130 CMR 422.410 and Exhibit 1). The appellant filed this appeal in a timely manner on 8/22/24. (130 CMR 610.015(B) and Exhibit 2). Modifications of a request for assistance are valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The issue is whether MassHealth was correct, under 130 CMR 422.410, 422.412, and 450.204, in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative testified that a request for 30 hours and 45 minutes per week of PCA services on behalf of the appellant was submitted by Boston Center for Independent Living on August 16, 2024. The MassHealth representative testified that the prior authorization (PA) for PCA services is applicable for dates of service beginning 9/22/24 and ending 9/21/25. The MassHealth representative testified that MassHealth authorized 26 hours per week by notice dated August 16, 2024. The appellant is [REDACTED] with a primary diagnosis of fibromyalgia. The appellant lives alone. The MassHealth representative testified that modifications were made to the appellant's request for Activities of Daily Living (ADLs), which include mobility – stairs and Passive Range of Motion exercises (PROM). The appellant agreed to the modification for assistance with stairs in and out of the house to zero minutes because this is considered recreation, so this issue is dismissed.

The MassHealth representative testified that the appellant requested 15 minutes, 1 time a day, 7 days a week for PROM exercises of the left leg. MassHealth modified this request to zero because the appellant's clinical record indicates that she does not require physical assistance with range-of-motion exercises to maintain or improve her functional abilities. The appellant testified that she had surgery on her left leg and the PCA assists with her physical therapy (PT) exercises. The appellant testified that the PCA holds the bands the appellant uses for PT. The MassHealth representative testified that PROM is for people who cannot move their own limbs.

The remaining modification is for meal preparation and cleanup, which is an Instrumental Activity of Daily Living (IADL). The MassHealth representative testified the appellant requested 95 minutes per day. MassHealth modified the request to 90 minutes per day. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The MassHealth representative testified that the appellant was allowed 90 minutes per day for meal prep last year. The MassHealth representative testified that the appellant's upper extremities are useful and she can assist with meal preparation and cleanup. The appellant testified that in her culture, cooking a meal takes more time. The appellant testified that it takes about 20 minutes to prepare her breakfast which consists of cereal, 30 minutes to prepare her lunch which consists of rice, beans, bacon, and salad, and 45 minutes to prepare her dinner which consists of vegetables, meat, and soup.

Findings of Fact

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

1. On 8/16/24 a request for 30 hours and 45 minutes per week of PCA services was submitted to MassHealth by Boston Center for Independent Living on behalf of the appellant.
2. The PA for PCA services is applicable for dates of service beginning 9/22/24 and ending 9/21/25.

3. MassHealth authorized 26 hours per week by notice dated August 16, 2024.
4. The appellant is [REDACTED] with a primary diagnosis of fibromyalgia. The appellant lives alone.
5. Modifications were made to the appellant's request for Activities of Daily Living (ADLs), which include mobility – stairs and Passive Range of Motion (PROM).
6. The appellant agreed to the modification for PCA assistance with stairs in and out of the house to zero minutes, because this is considered recreation, so this issue is **dismissed**.
7. The appellant requested 15 minutes, 1 time a day, 7 days a week for PROM of the left leg.
8. MassHealth modified this request to zero because the appellant's clinical record indicates that she does not require physical assistance with range of motion exercises to maintain or improve her functional abilities.
9. The appellant testified that she had surgery on her left leg and the PCA assists with her PT exercises. The appellant testified that the PCA holds the bands the appellant uses for PT.
10. PROM is for people who cannot move their own limbs (MassHealth testimony).
11. The appellant requested 95 minutes per day for meal preparation and cleanup. MassHealth modified the request to 90 minutes per day. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs.
12. The MassHealth representative testified that the appellant was allowed 90 minutes per day for meal preparation and cleanup last year. The MassHealth representative testified that the appellant's upper extremities are useful and she can assist with meal preparation and cleanup.
13. The appellant testified that her breakfast consists of cereal, her lunch consists of rice, beans, bacon, and salad, and her dinner consists of vegetables, meat, and soup, and that in her culture, cooking a meal takes more time.

Analysis and Conclusions of Law

MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met:

- (1) The personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (2) The member's disability is permanent or chronic in nature and impairs the member's functional ability to perform ADLs and IADLs without physical assistance.
- (3) The member, as determined by the personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - a. mobility, including transfers;
 - b. medications,
 - c. bathing or grooming;
 - d. dressing or undressing;
 - e. range-of-motion exercises;
 - f. eating; and
 - g. toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

(130 CMR 422.403(C)).

MassHealth will pay for PCA services provided to MassHealth members who can be appropriately cared for in the home. (130 CMR 422.401 *et seq.*). The member must require physical assistance. The personal care agency determines the extent of the personal care services provided by a paid PCA. (130 CMR 422.403). Personal care services consist of physical assistance with activities of daily living (ADLs). (130 CMR 422.410(A)).

120 CMR 422.410: Activities of Daily Living and Instrumental Activities of Daily Living

- (A) Activities of Daily Living. Activities of daily living include the following:
- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
 - (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
 - (3) bathing or grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
 - (4) dressing or undressing: physically assisting a member to dress or undress;

- (5) passive range-of-motion exercises: physically assisting a member to perform range-of-motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

(B) Instrumental Activities of Daily Living. Instrumental activities of daily living include the following:

- (1) household services: physically assisting with household management tasks that are incidental to the care of the member, including laundry, shopping, and housekeeping;
- (2) **meal preparation and clean up: physically assisting a member to prepare meals;**
- (3) transportation: accompanying the member to medical providers; and
- (4) special needs: assisting the member with:
 - (a) the care and maintenance of wheelchairs and adaptive devices;
 - (b) completing the paperwork required for receiving personal care services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.

- (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.
- (2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.
- (3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

(emphasis added)

The requested services must also be medically necessary for prior authorization to be approved. (130 CMR 450.204). MassHealth will 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 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 include, but are not limited to, health care reasonably known by the provider or identified by the MassHealth pursuant to a prior authorization request, to be available to the member through sources described in 130 CMR 450.317(C), 503.007, or 517.007.

Regulations at 130 CMR 422.412 describe non-covered PCA services, as follows:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program. (130 CMR 422.412).

- (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;
- (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; or
- (G) surrogates, as defined in 130 CMR 422.402.
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency.

Per 130 CMR 503.007, MassHealth is the payer of last resort and only pays for health care and related services when no other source of payment is available, except as otherwise required by federal law.

- (A) Health Insurance. Every applicant and member must obtain and maintain available health insurance in accordance with 130 CMR 505.000: Health Care

- Reform: MassHealth: Coverage Types. Failure to do so may result in loss or denial of eligibility unless the applicant or member is
- (1) receiving MassHealth Standard or MassHealth CommonHealth; and
 - (2) younger than 21 years old or pregnant.
- (B) Use of Benefits. The MassHealth agency does not pay for any health care and related services that are available
- (1) through the member's health-insurance, if any; or
 - (2) at no cost to the member including, but not limited to, any such services that are available through any agency of the local, state, or federal government, or any entity legally obligated to provide those services.

MassHealth received a PA request for PCA services on the appellant's behalf from her PCM agency. The appellant is [REDACTED], with a primary diagnosis of fibromyalgia. The appellant requested 15 minutes, 1 time a day, 7 days of PCA assistance for PROM of the left leg. The PCA Operating Standards state that PCA assistance and time for PROM "may only be requested for the range of motion that is dependent." ¹ The appellant is not dependent on the PCA moving her left leg and the appellant testified that the PCA assists with PT exercises. MassHealth was correct in determining that the request for PROM is not covered under the PCA program. This portion of the appeal is **denied**.

The appellant requested 95 minutes per day of PCA assistance for meal preparation and cleanup. MassHealth modified the request 90 minutes per day. MassHealth modified this request because the request was longer than ordinarily required for someone with the appellant's functional ability. The appellant is listed as requiring moderate assistance for dressing/undressing, mobility, and toileting, and is listed as independent for eating. The appellant has use of her arms and can therefore sit and participate in some meal preparation activities. For this reason, the MassHealth decision to authorize 90 minutes per day of PCA assistance for meal preparation and cleanup was correct.

The portion of the appeal is **denied**.

Order for MassHealth

None.

¹ XXI. Passive Range Of Motion (PROM) Requests: (A)(3) Comments regarding the PROM assistance must be noted as part of the evaluation. Comments specific to PCA PROM assistance will include, as applicable, considerations listed for PROM in the *Time For Task Guidelines for the MassHealth PCA Program*. Please refer to the *Time For Task Guidelines for the MassHealth PCA Program* prior to completing any evaluation for current guidance. As a reminder, these considerations include, as applicable, the following: a) Functional ability (A member may have partial range of motion (as documented in the evaluation); however, PROM PCA assistance and time may only be requested for the range of motion that is dependent.)

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

cc: MassHealth Representative: Optum MassHealth LTSS