

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2413245
Decision Date:	11/13/2024	Hearing Date:	09/23/2024
Hearing Officer:	Christine Therrien		

Appearance for Appellant:
Pro se

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

Interpreter:



*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	Issue:	PCA services
Decision Date:	11/13/2024	Hearing Date:	09/23/2024
MassHealth/Optum Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Pro se
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 8/21/24, MassHealth modified the appellant's prior authorization (PA) request for personal care attendant (PCA) services. (130 CMR 422.410 and Exhibit 1). The appellant filed this appeal in a timely manner on 8/26/24. (130 CMR 610.015(B) and Exhibit 2). Modification of a prior authorization (PA) request is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's PA 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 PA request for PCA services.

Summary of Evidence

The MassHealth representative testified that a request for 46 hours per week of PCA services on behalf of the appellant was submitted by [REDACTED] to MassHealth on 8/21/24. The MassHealth representative testified that the prior authorization (PA) period is applicable for dates of service beginning 8/30/24 and ending 8/29/25. The MassHealth representative testified that by notice dated 8/21/24, MassHealth authorized 41 hours of PCA assistance per week. The appellant is [REDACTED] years old with a primary diagnosis of chronic pain. The appellant lives with her spouse, who is also a PCA consumer, and her five children. The MassHealth representative testified that modifications were made to the appellant's request for assistance with bathing, dressing, undressing, medication administration, and transportation to medical appointments.

The MassHealth representative testified that the appellant requested 60 minutes, 1 time per day, 7 days per week for bathing. MassHealth modified the request to 45 minutes, 1 time per day, 7 days per week. 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 is listed as dependent for bathing. The MassHealth representative testified that the evaluation does not indicate any changes from last year's evaluation, and last year the appellant was given 45 minutes, 1 time per day 7 days per week for bathing. The appellant did not provide any testimony asserting that she needs additional PCA assistance time for bathing.

The MassHealth representative testified that the appellant requested 20 minutes, 1 time per day, 7 days per week of assistance for dressing and 15 minutes, 1 time per day, 7 days per week of assistance for undressing. MassHealth modified the request to 15 minutes, 1 time per day, 7 days per week for dressing, and 10 minutes, 1 time per day, 7 days per week for undressing. 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 is listed as dependent for dressing and undressing. The MassHealth representative testified that the evaluation does not indicate any changes from last year's evaluation and last year, the appellant was given 15 minutes, 1 time per day 7 days per week for dressing and 10 minutes, 1 time per day, 7 days per week for undressing. The MassHealth representative testified that the documentation states the appellant tires easily and must rest in between tasks. The MassHealth representative testified that the PCA program covers hands on assistance only and does not cover the waiting time while the appellant rests. The appellant testified that that she has inflammation with her joints, and also she has severe back pain.

The MassHealth representative testified that the appellant requested 3 minutes, 4 times per day, 7 days per week and 3 minutes, 3 times per day, 7 days a week for medication administration. MassHealth modified the request to 3 minutes, 4 times per day, 7 days per week for medication administration. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The MassHealth representative testified that the documentation states the appellant requires assistance due to poor hand grasp and inability to open bottles, and the appellant is forgetful and will forget to take her medication. The

appellant has multiple topical medications for both pain and skin issues. The MassHealth representative testified that the appellant is prescribed the same types and doses of medications as last year, and the appellant was authorized for 3 minutes of PCA assistance, 4 times per day, 7 days per week last year. The appellant did not offer any testimony to support the need for additional time.

The MassHealth representative testified the appellant requested 100 minutes per week for transportation to medical appointments. MassHealth modified the request to 28 minutes per week.¹ MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The MassHealth representative testified that MassHealth allows 4 PCP visits per year, and one visit per year for each of her other fourteen specialists. This includes 6 visits to the hand specialist. The MassHealth representative testified that the appellant has the same specialists as last year as she does this year, with no signs of improvement. The MassHealth representative testified that last year the appellant received 75 minutes per week because last year she had hand surgery, and was seeing a hand specialist with a request for 24 visits. By contrast, the request this year is for 6 visits to the hand specialist. The MassHealth representative testified that there must be a diagnosis to support the visit requests, which is based on medical necessity. The appellant questioned why she is allowed only one visit to each specialist, when she has inflammation in her body.

Findings of Fact

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

1. On 8/21/24, MassHealth received a PA request for 46 hours per week for PCA services of the appellant's behalf from [REDACTED]
2. The PA for PCA services is applicable for dates of service beginning 8/30/24 and ending 8/29/25.
3. MassHealth authorized 41 hours per week for PCA services by notice dated 8/21/24.
4. The appellant is [REDACTED] years old with a primary diagnosis of chronic pain.
5. The appellant lives with her spouse, who is also a PCA consumer and her five children.
6. Modifications were made to the appellant's request for assistance with bathing, dressing, undressing, medication administration, and transportation to medical appointments.

¹¹ Each visit is allotted 60 minutes for approximately 24 doctor visits per PA period, as follows: 4 primary care visits, 14 specialist visits, 6 hand doctor visits. (Exhibit 5, pp. 38).

7. The appellant requested 60 minutes, 1 time per day, 7 days per week for bathing. MassHealth modified the request to 45 minutes, 1 time per day, 7 days per week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs.
8. The appellant is listed as dependent for bathing.
9. The evaluation does not indicate any changes from last year's evaluation and last year the appellant was authorized to receive 45 minutes, 1 time per day 7 days per week for bathing.
10. The appellant did not provide any testimony that would indicate the need for additional time for bathing.
11. The appellant requested 20 minutes, 1 time per day, 7 days per week for dressing and 15 minutes, 1 time per day, 7 days per week for undressing.
12. MassHealth modified the request to 15 minutes, 1 time per day, 7 days per week for dressing and 10 minutes, 1 time per day, 7 days per week for undressing. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs.
13. The appellant is listed as dependent for dressing and undressing.
14. The MassHealth representative testified that the evaluation does not indicate any changes from last year's evaluation and last year the appellant was given 15 minutes, 1 time per day 7 days per week for dressing and 10 minutes, 1 time per day, 7 days per week for undressing.
15. The documentation states the appellant tires easily and must rest in between tasks.
16. The appellant requested 3 minutes, 4 times per day, 7 days per week and 3 minutes, 3 times per day, 7 days a week for medication administration.
17. MassHealth modified the request to 3 minutes, 4 times per day, 7 days per week for medication administration. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs.
18. The documentation states the appellant requires assistance due to poor hand grasp and inability to open bottles, and that the appellant is forgetful and will forget to take her medication. The appellant has multiple topical medications for both pain and skin issues.

19. The appellant is prescribed the same types and doses of medications as last year, and the appellant had 3 minutes, 4 times per day, 7 days per week last year.
20. The appellant requested 100 minutes per week for transportation to medical appointments.
21. MassHealth modified the request to 28 minutes per week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs.
22. MassHealth allows 4 PCP visits per year and one visit per year each for the other fourteen specialists.
23. The appellant has the same specialists as last year.
24. Last year, the appellant was authorized for 75 minutes of PCA assistance per week because last year, she had hand surgery and was seeing a hand specialist with a request for 24 visits. This year, the PA request is for 6 visits to a hand specialist.

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 (IADLs). 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.

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. 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.

(emphasis added)

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.

The appellant requested 60 minutes, 1 time per day, 7 days per week for bathing. MassHealth modified the request to 45 minutes, 1 time per day, 7 days per week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. While the appellant is listed as dependent for bathing, the evaluation does not indicate any changes from last year's evaluation. Last year the appellant was authorized to receive 45 minutes, 1 time per day, 7 days per week for bathing. The appellant did not provide any testimony that would indicate additional time for bathing this year is medically necessary under 130 CMR 450.204. For this reason, the appeal of the modification to PCA assistance time with bathing is **DENIED**.

The appellant requested 20 minutes, 1 time per day, 7 days per week for dressing, and 15 minutes, 1 time per day, 7 days per week for undressing. MassHealth modified the request to 15 minutes, 1 time per day, 7 days per week for dressing and 10 minutes, 1 time per day, 7 days per week for undressing. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The appellant's evaluation does not indicate any changes from last year and last year the appellant was given 15 minutes, 1 time per day 7 days per week for dressing and 10 minutes, 1 time per day, 7 days per week for undressing. The appellant is listed as dependent for dressing and undressing but requires breaks during tasks because she tires easily. Per 130 CMR 422.412(C), the PCA program covers hands on assistance only and does not cover the waiting time. For this reason, the appeal of the modifications to PCA assistance time with

dressing and undressing are **DENIED**.

The appellant requested 3 minutes, 4 times per day, 7 days per week and 3 minutes, 3 times per day, 7 days a week of PCA assistance with medication administration. MassHealth modified the request to 3 minutes, 4 times per day, 7 days per week for medication administration. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The documentation states the appellant requires assistance due to poor hand grasp and inability to open bottles, and the appellant is forgetful and will forget to take her medication. The appellant is prescribed the same types and doses of topical medications for both pain and skin issues as last year. The appellant was authorized for 3 minutes, 4 times per day, 7 days per week last year of PCA assistance time with medication administration. There is nothing in the documentation to indicate that additional time for medication administration this year is medically necessary under 130 CMR 450.204. For this reason, the appeal of the modification of PCA assistance time with medication administration is **DENIED**.

The appellant requested 100 minutes per week for transportation to medical appointments. MassHealth modified the request to 28 minutes per week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. MassHealth allowed 4 PCP visits per year, and one visit per year each for the appellant's other fourteen specialists (the same as last year). The appellant has the same specialists as last year as she does this year. While the appellant received 75 minutes per week last year because of the acute need to see a specialist after hand surgery (24 visits), this year the request is for only 6 visits. There is nothing in the documentation to indicate that the additional time for transportation to medical appointments this year is medically necessary under 130 CMR 450.204. For this reason, the appeal of the modification of PCA assistance time for transportation to medical appointments is **DENIED**.

Order for MassHealth

None.

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