

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2413267
Decision Date:	11/15/2024	Hearing Date:	09/30/2024
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
Decision Date:	11/15/2024	Hearing Date:	09/30/2024
MassHealth/Optum Rep.:	Kelly Rayen, R.N.	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South Telephonic		

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 7/19/24, 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 8/26/24. (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 appellant attended the hearing with an employee of the PCM agency, who stated he was there for moral support and would not testify. The MassHealth representative testified that a prior authorization (PA) request for 28 hours, 45 minutes per week for an initial evaluation for personal care attendant (PCA) services was submitted by [REDACTED] on 6/18/23. The MassHealth representative testified that the PA for PCA services is applicable for dates of service beginning 7/19/24 and ending 7/18/25. The MassHealth representative testified that by notice dated 7/19/2024, MassHealth authorized 23 hours, 15 minutes per week of PCA services.

The appellant is [REDACTED] years old with a primary diagnosis of peritoneal cancer, end-stage renal disease, and major depression. The MassHealth representative testified that an occupational therapist documented the appellant to be independent with medication management, all toileting needs, stairs, and driving. The appellant requires moderate assistance for bathing, and minimal assistance for grooming, dressing, and transferring in and out of the tub. The appellant's doctor submitted a letter stating appellant requires assistance with housekeeping, meal preparation, and showering due to her medical condition. The appellant lives alone and has a caretaker who assists the appellant at nighttime. The MassHealth representative testified that modifications were made to the appellant's request for assistance with Activities of Daily Living (ADLs) which include climbing/descending stairs, hair washing, dressing, undressing, and dialysis. The appellant agreed to the time allowed for dressing, 15 minutes, once a day, 7 days a week and undressing, 10 minutes, once a day, 7 days a week, so these issues are **dismissed**.

The remaining three modifications are climbing/descending stairs, hair washing, and dialysis. The MassHealth representative testified that the appellant requested 10 minutes, 2 times a day, 7 days a week for negotiating stairs to assist the appellant to and from her bedroom, which is on the second floor. MassHealth modified this request to 7 minutes, 2 times a day, 7 days a 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 independent with stairs, but given that the appellant does have end-stage renal disease, there is probably some weakness, but not enough documentation to support 10 minutes per episode for navigation of the stairs. The appellant testified that it takes her maybe 20 minutes to go up and down the stairs. The appellant testified that she can barely walk and her "legs don't work." The appellant stated that she would need the PCA to hold her arm or stand behind her while she walks up and down the stairs.

The MassHealth representative testified the appellant requested 10 minutes per day, 7 days per week for hair washing. MassHealth modified this to 0 because of the requested time for assistance with hair washing is longer than ordinarily required for someone with her physical needs and the time is included with bathing. The MassHealth representative testified that the appellant's request for 30 minutes per day for bathing was approved. MassHealth did not approve this extra time for hair washing because the documentation states that hair washing is included with the bathing.

The appellant did not offer any testimony regarding hair washing, but stated that she was concerned about her dialysis because right now she has to do her at-home dialysis at night, and she does not get to sleep until the early morning since there is no one during the day to assist with this process.

The MassHealth representative testified the appellant requested 30 minutes, 2 times a day, 4 days a week of PCA assistance with dialysis. MassHealth modified this request to 15 minutes, 2 times a day, 4 days a week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The documentation states the appellant requires minimal assistance with dialysis. The appellant testified that she needs someone to help set up the machine, then empty the dialysis treatment with her. The appellant testified that she wants someone to just be there while she is doing the treatment. The appellant testified that she can "legally" do solo dialysis, but she prefers that someone is with her. The appellant testified that she does not have a port and sticks the needles in her arm herself, and that she requires assistance hanging the heavy bag of fluid. The MassHealth representative testified that set up of the dialysis machine should take 15 minutes and breaking down the machine should take 15 minutes. The appellant did not offer further testimony as to why more time is required for this process.

Findings of Fact

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

1. On 6/18/24, MassHealth received an initial evaluation PA request for 28 hours, 45 minutes per week of PCA services for the appellant from Independence Associates, a PCM agency.
2. The PA for PCA services is applicable for dates of service beginning 7/19/24 and ending 7/18/25.
3. By notice dated 7/19/24, MassHealth authorized 23 hours and 15 minutes of PCA assistance per week.
4. The appellant is ■ years old with primary diagnoses of peritoneal cancer, end-stage renal disease, and major depression.
5. An occupational therapist documented the appellant to be independent with medication management, all toileting needs, climbing/descending stairs, and driving. The appellant requires moderate assistance for bathing, minimal assistance for grooming, dressing, and transferring in and out of the tub.

6. The appellant's doctor submitted a letter stating appellant requires assistance with housekeeping, meal preparation, and showering due to her medical condition.
7. The appellant lives alone and has a caretaker who assists the appellant at nighttime.
8. Modifications were made to the appellant's request for ADLs which include negotiating stairs, hair washing, dressing, undressing, and dialysis.
9. The appellant agreed to the time MassHealth authorized for dressing, 15 minutes, once a day, 7 days a week, and undressing 10 minutes, once a day, 7 days a week, so these issues are **dismissed**.
10. The appellant requested 10 minutes, 2 times a day, 7 days a week for climbing/descending stairs to assist the appellant to and from her bedroom which is on the second floor.
11. MassHealth modified this request to 7 minutes, 2 times a day, 7 days a week.
12. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs.
13. The MassHealth representative testified that the appellant is independent with stairs, but given that the appellant has end-stage renal disease, there is probably some weakness, but not enough documentation to support the requested , 10 minutes per episode for navigation of the stairs.
14. The appellant requested 10 minutes per day, 7 days per week for hair washing.
15. MassHealth modified this to 0 because of the requested time for assistance with hair washing is longer than ordinarily required for someone with her physical needs, and the time for hair washing is included with bathing.
16. The appellant's request for 30 minutes per day for bathing was approved, and the documentation states that hair washing is included with the bathing.
17. The appellant did not offer any testimony regarding hair washing.
18. The appellant requested 30 minutes, 2 times a day, 4 days a week of PCA assistance for dialysis.
19. MassHealth modified this request to 15 minutes, 2 times a day, 4 days a week.
20. MassHealth modified this request because it is longer than ordinarily required for someone

with the appellant's needs. The documentation received with the PA request states the appellant requires minimal assistance with dialysis.

21. The appellant can do solo dialysis.
22. The appellant does not have a port and sticks the needles in her arm herself, and she requires assistance hanging the heavy bag of fluid.
23. MassHealth testified that the set-up of the dialysis machine should take 15 minutes and breaking down the machine should take 15 minutes.
24. The appellant did not offer further testimony as to why more time is required for this process.

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 10 minutes, 2 times a day, 7 days a week of PCA assistance for climbing/descending stairs, assisting the appellant to and from her bedroom, which is on the second floor. MassHealth modified this request to 7 minutes, 2 times a day, 7 days a week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The appellant's evaluation lists her as independent with stairs, but given that she has poor use of her legs and gets tired, MassHealth allowed time for the PCA to assist with the stairs. 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 for the modifications to the request for assistance with stairs is **DENIED**.

The appellant requested 10 minutes per day, 7 days per week for hair washing. MassHealth modified this to 0 because it is longer than ordinarily required for someone with the appellant's needs. The appellant requested, and was authorized for, 30 minutes per day, 7 days per week for bathing, which includes hair washing; therefore, the need for additional time for hair washing is not medically necessary under 130 CMR 450.204. For this reason, the appeal for the modification to hair washing is **DENIED**.

The appellant requested 30 minutes, 2 times a day, 4 days a week for dialysis. MassHealth modified this request to 15 minutes, 2 times a day, 4 days a week. MassHealth modified this request because it is longer than ordinarily required for someone with the appellant's needs. The documentation states the PCA assists with setting up and cleaning up of dialysis four days a week. The appellant testified that she can do the dialysis herself, but needs help hanging the heavy bag of fluid and cleaning up afterward. The documentation states the appellant requires minimal assistance with dialysis. There is nothing in the documentation, nor in the appellant's testimony, to indicate that the additional time for dialysis is medically necessary under 130 CMR 450.204. For this reason, the appeal for the modification to PCA assistance with dialysis is also **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: [REDACTED]

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