

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2413297
Decision Date:	09/30/2024	Hearing Date:	09/19/2024
Hearing Officer:	Thomas Doyle	Record Open to:	

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown OTR/L

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:	Prior Authorization – PCA Services
Decision Date:	09/30/2024	Hearing Date:	09/19/2024
MassHealth’s Rep.:	Robin Brown RN	Appellant’s Rep.:	Christine Abany
Hearing Location:	Remote (phone)	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 June 5, 2024, MassHealth modified the appellant’s prior authorization request for personal care attendant (PCA) services. (Ex. 1). Appellant filed this appeal in a timely manner on July 8, 2024. (Ex. 2). Modification and/or denial of PCA hours is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth denied appellant’s prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in denying appellant’s prior authorization request for PCA services.

Summary of Evidence

Appellant and his appeal representative appeared at the hearing by phone. MassHealth was represented by an Occupational Therapist (OT), who also appeared by phone. All were sworn, documents were marked as evidence and the hearing commenced. The OT testified appellant is a male in his [REDACTED]. He has a of diagnosis of Traumatic Brain Injury, aphasia, grand mal seizures and history of falls. (Testimony; Ex. 4, p. 8). There is no aid pending. (Testimony). Appellant's PCM agency, Independence Associates, Inc., submitted a prior authorization request for PCA services on May 17, 2024. MassHealth denied the request stating documentation submitted does not support appellant needs hands on, physical assistance with at least 2 ADL's. (Testimony).

The OT stated 2 ADL's were requested. Bathing was requested at 15 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 18). The OT stated the reasoning for this ADL, as stated in the comments on page 18 of Exhibit 4, "made sense" and the "reviewer was not in disagreement" with this ADL. (Testimony). When prompted to clarify if MassHealth found appellant needed physical assistance with this ADL, she said "yes." (Testimony). Appellant next requested PCA time for Assistance with Medications. MassHealth modified physical assist with medication from 3 minutes an episode, 2 episodes a day, 7 days a week to 0 for the PCA to assist appellant with taking his pills. (Testimony; Ex. 4, p. 26). The OT stated the PCA giving pills to appellant is supervision and not a hands-on assist. She stated appellant has the physical ability to feed himself, use the toilet, dress himself and has the use of his upper extremities. (Testimony; Ex. 4, p. 7). Appellant is also independent in Mobility, Grooming and Passive Range of Motion (PROM). (Ex. 4, p. 7). The OT stated the reasoning given to MassHealth for assistance with medications was to ensure compliance and due to cognitive deficits. (Testimony; Ex. 4, p. 26). The OT stated there was no mention in the request for time for this ADL of appellant needing physical assistance with his medications. (Testimony).

The appeal representative testified for appellant. She referenced two doctor's letters in evidence dealing with appellant's cognitive decline. (Ex. 5, pp. 1-2; 3-6). She stated his cognitive issues require appellant to have assistance in taking his medications. However, the June 2024 doctor's letter states the appeal representative "reminds him to take his pills twice daily." (Ex. 5, p. 1). The appeal representative said she prepares all the appellant's food, makes all his doctor's appointments and drives him to the appointments. She did not deny appellant was independent with Mobility, Grooming, Toileting, Dressing, Eating or PROM. (Ex. 4, p. 7). Included in the evidence, it is stated appellant "can clearly describe how they manage their medications/medication needs." (Ex. 4, p. 48).

Findings of Fact

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

1. Appellant is a male in his [REDACTED]'s who has a of diagnosis of Traumatic Brain Injury, aphasia,

grand mal seizures and history of falls. (Testimony; Ex. 4, p. 8).

2. There is no aid pending. (Testimony).

3. Appellant's PCM agency, Independence Associates, Inc., submitted a prior authorization request for PCA services on May 17, 2024. (Testimony).

4. MassHealth denied the request stating documentation submitted does not support appellant needs hands on, physical assistance with at least 2 ADL's. (Testimony).

5. Appellant qualified for PCA services for the ADL of Bathing because he required physical assistance with this task. (Testimony).

6. Appellant requested PCA time for Assistance with Medications at 3 minutes an episode, 2 episodes a day, 7 days a week. MassHealth modified the request for this task to 0 time for the PCA to assist appellant with taking his pills. (Testimony; Ex. 4, p. 26).

7. Appellant is physically able to feed himself, use the toilet, dress himself and has the use of his upper extremities. (Testimony; Ex. 4, p. 7). Appellant is independent in Mobility, Grooming and Passive Range of Motion (PROM). (Ex. 4, p. 7).

8. The appeal representative has to remind appellant to take his pills. (Ex. 5, p. 1).

Analysis and Conclusions of Law

The appellant has the burden "to demonstrate the invalidity of the administrative determination." Andrews v. Division of Medical Assistance, 68 Mass. App. Ct. 228 (2007). Moreover, "[p]roof by a preponderance of the evidence is the standard generally applicable to administrative proceedings." Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983).

422.416: PCA Program: Prior Authorization for PCA Services

(A) Initial Request for Prior Authorization for PCA Services. With the exception of 130 CMR 422.416(D), PCM agencies must submit the initial request for prior authorization for PCA services to the MassHealth agency within 45 calendar days of the date of the initial inquiry about a member to the PCM agency for PCA services. Requests for prior authorization for PCA services must include:

- (1) the completed MassHealth Application for PCA Services and MassHealth Evaluation for PCA Services;
- (2) the completed MassHealth Prior Authorization Request form;
- (3) any documentation that supports the member's need for PCA services. This**

documentation must:

- (a) identify a permanent or chronic disability that impairs the member's ability to perform ADLs and IADLs without physical assistance; and
- (b) state that the member requires physical assistance with two or more ADLs as defined in 130 CMR 422.410(A).**
- (4) the completed and signed assessment of the member's ability to manage the PCA program independently. **(emphasis added)**.

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(A) A service is "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, or 517.007.

(B) 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. A provider must make those records, including medical records, available to the MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(A) Activities of Daily Living (ADLs). 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/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. (**Emphasis added**).

(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 PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member. (**Emphasis added**).

422.403: Eligible Members

...

(C) MassHealth covers PCA services provided to eligible MassHealth members who can be appropriately cared for in the home when all of the following conditions are met:

- (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 ADLs and IADLs without physical assistance.
- (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)**. (**Emphasis added**).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

422.412: Non-covered Services

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

...

(C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.

MassHealth made modifications to appellant's prior authorization requests for the ADL of Assistance with Medications. (Testimony; Ex. 4, p. 26).

Assistance with Medications:

MassHealth modified Assistance with Medication from 3 minutes an episode, 2 episodes a day, 7 days a week to 0 for the PCA to assist appellant with taking his pills. (Testimony; Ex. 4, p. 26). The OT stated the PCA giving pills to appellant is supervision and not a hands-on assist. She stated appellant has the physical ability to feed himself, use the toilet, dress himself and has the use of his upper extremities. (Testimony; Ex. 4, p. 7). Appellant is also independent in Mobility, Grooming, Toileting, Dressing, Eating and Passive Range of Motion (PROM). (Ex. 4, p. 7).

Activities of daily living are applicable when a person requires physical assistance. Appellant's level of assist for Mobility, Grooming, Dressing, Eating and PROM is independent. The evidence does not reflect appellant needs physical Assistance with Medications. The evidence shows the assistance provided for that activity is in the form of cueing, prompting, supervision, guiding, or coaching. These are non-covered services. 130 CMR 422.412 (C). MassHealth's denial of the ADL of Assistance with Medications for the PCA to assist with the medications was correct. Appellant's level of assist with eating is independent. It is reasonable to assume he has dexterity of his fingers because he can feed himself and therefore can take his medications himself. I have reviewed the letters from appellant, specifically the letter dated June 26, 2024. (Ex. 5, pp. 1-2). The letter states that the appeal representative "has to remind him (appellant) to take his pills)." (Ex. 5, p. 1). This affirms appellant can physically take his medication. Reminding him to do so is clearly cueing, prompting and guidance, non-covered services.

Appellant has not met his burden and does not require physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A). Therefore, it is unnecessary to analyze the instrumental activities of daily living because appellant does not qualify for PCA services.

The appeal 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.

Thomas Doyle
Hearing Officer
Board of Hearings

cc:

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