

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2414104
Decision Date:	12/12/2024	Hearing Date:	10/25/2024
Hearing Officer:	Thomas Doyle	Record Open to:	N/A

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Kelly Rayen, RN



*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:	12/12/2024	Hearing Date:	10/25/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	Pro se
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 August 27, 2024, MassHealth denied appellant's prior authorization request for personal care attendant (PCA) services. (Ex. 1). Appellant filed this appeal in a timely manner on September 19, 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, acting pro se, appeared by phone. MassHealth was represented by a Registered Nurse, (RN), who also appeared by phone. The hearing commenced, all were sworn and documents were

marked as evidence. The RN testified appellant is a female in her [REDACTED]. She has a diagnosis of insulin-dependent diabetes, COPD, severe obesity and schizoaffective disorder. (Testimony; Ex. 4, p. 11-12). Appellant's PCM agency, Tempus Unlimited, Inc., submitted a prior authorization request for PCA services on August 22, 2024 requesting 9 hours and 45 minutes a week for one year. MassHealth denied the request on August 27, 2024 stating the documentation submitted does not support that appellant needs hands on, physical assistance with at least 2 ADL's. (Testimony).

The RN referred to the Occupational Therapy (OT) report in evidence. Appellant was independent with Mobility using a cane and the wall, which was observed. (Testimony; Ex. 4, pp. 5-9). Appellant is independent with Bladder and Bowel toileting transfers. She is independent with toileting hygiene and clothing management. (Id.). The Occupational Therapist documented appellant appears to have the functional ability to feed herself as evidenced by range of motion (ROM) demonstrated during the evaluation. Appellant is independent with managing her medications, inhalers and insulin. She appears to be familiar with her medications and their purpose. Appellant reported she checks her blood sugar four times a day and does so independently. (Testimony; Ex. 4, p. 8). Appellant has full use of her upper extremities and can reach all areas of her upper body to complete grooming and dressing tasks. (Testimony; Ex. 4, p. 8). The OT report noted appellant appears to have the range of motion necessary to don and doff upper body clothing. (Ex. 4, p. 8). The RN stated appellant reports she can self-manage changing a brief or pad. (Testimony; Ex. 4, p. 24). The RN stated the prior authorization denial underwent review by a medical doctor who agreed with MassHealth in denying prior authorization for lacking 2 or more ADL's. (Testimony).

The RN stated 2 ADL's were requested, Bathing or Grooming, which is classified as one ADL, (130 CMR 422.410 (A)(3)) and Dressing. (130 CMR 422.410 (A)(4)). (Testimony). Bathing was requested at 30 minutes a day, 7 days a week. The nurse evaluator noted due to schizoaffective disorder and disorganized thought process, appellant is easily agitated and needs assistance. Appellant will not initiate or follow through. She reports her son assists her to into the tub and assists to wash hard to reach areas in the lower body. Appellant reports her back is still an issue. (Testimony; Ex. 4, p. 18-19). The RN stated MassHealth denied the prior authorization for this task because while it does seem appellant may need some assistance in this area, it is for transfers as it is noted appellant's son assists appellant into the tub. The RN stated appellant can obtain a bathing transfer bench and can then independently get in and out of the tub,¹ just as appellant can independently get in and out of bed and independently get on and off the toilet. (Ex. 4, p. 6).

Grooming, to apply lotion, was requested at 5 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 20). For Grooming, the RN noted the request for this task was to assist with setup and clean up; assist with lotion application to lower extremities due to back pain and

¹ The RN noted in her testimony the conflicting information from the evaluating nurse regarding Bathing. The PCM requested time for Bathing, but the evaluating nurse wrote that appellant was independent for getting in and out of tub/shower. (Ex. 4, p. 6, 18-19).

appellant is Independent in all other tasks. (Testimony; Ex. 4, p. 20). The RN stated this prior approval request was denied because there was no diagnosis to support the request for assistance with applying lotion. The RN stated if appellant is seated, she should be able to reach her legs as there is no upper body impairment affecting appellant's range of motion. (Testimony).

Dressing was requested at 5 minutes an episode, 1 episode a day, 7 days a week. The RN noted the comments under Dressing, written by the evaluating nurse. The comments state appellant needs assistance with starting lower body clothes due to back issues; appellant does not get out of her pajamas for the most part without assistance; appellant lacks motivation and reports pain; appellant reports she is independent in removing clothes. (Ex. 4, p. 22). The RN stated prior approval for this task was denied because the documents state appellant lacks motivation (Ex. 4, p. 22) and this is akin to cueing. Assistance provided in the form of cueing is not covered by MassHealth. (130 CMR 422.412 (C)).

Appellant testified on her own behalf. She stated she needs help in the shower. She stated her son comes to her home every few days to help her bath and dress. She stated she does not wear socks because she cannot reach down to her feet. She did admit she administers her own insulin. She testified she is unsteady at this point and when she was evaluated there were "a lot of things they did not see me do." (Testimony).

Findings of Fact

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

1. Appellant is a female in her [REDACTED] with a diagnosis of insulin dependent diabetes, COPD, and obesity. (Testimony; Ex. 4, p. 11-12).
2. Appellant's PCM agency, Tempus Unlimited, Inc., submitted a prior authorization request for PCA services on August 22, 2024 requesting 9 hours and 45 minutes a week for one year. MassHealth denied the request on August 27, 2024 stating documentation submitted does not support that appellant needs hands on, physical assistance with at least 2 ADL's. (Testimony).
3. Appellant requested time for Bathing and Grooming, which is classified as one ADL. (130 CMR 422.410 (A)(3)). Bathing was requested at 30 minutes a day, 7 days a week. (Ex. 4, p. 18). Grooming, lotion, was requested at 5 minutes an episode, 1 episode a day, 7 days a week. (Testimony; Ex. 4, p. 20).
4. Dressing was requested at 5 minutes an episode, 1 episode a day, 7 days a week. (Ex. 4, p. 22).
5. MassHealth did not approve time for Bathing, Grooming or Dressing. (Testimony).

6. Appellant is independent with Mobility using a cane and the wall, which was observed. (Testimony; Ex. 4, pp. 5-9).
7. Appellant is independent with Bladder and Bowel toileting transfers, toileting hygiene and clothing management. (Ex. 4, pp. 5-9).
8. Appellant can feed herself and is independent with managing her medications, inhalers and insulin and checks her blood sugar four times a day and does so independently. (Testimony; Ex. 4, pp. 7-9).
9. Appellant has full use of her upper extremities and can reach all areas of her upper body to complete grooming and dressing tasks and she has the range of motion necessary to don and doff upper body clothing. (Testimony; Ex. 4, p. 8).
10. Appellant can self-manage changing a brief or pad. (Testimony; Ex. 4, p. 24).

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's of Bathing/Grooming and Dressing. (Testimony Ex. 4, p. 18, 20 and 22).

Bathing:

Bathing was requested at 30 minutes a day, 7 days a week. MassHealth modified this to zero time.

The RN stated MassHealth denied the prior authorization for this task because, while it does seem appellant may need some assistance in this area, it is only for transfers as it is noted appellant's son assists appellant into the tub. The RN stated appellant can obtain a bathing transfer bench and can then independently get in and out of the tub, just as the evaluation shows appellant can independently get in and out of bed and independently get on and off the toilet. I find MassHealth's modification of time for this task to zero is supported by the record. Appellant is independent in the areas of Mobility, Mobility Transfers, Toileting and with her Medications. Appellant can feed herself. This independence indicates appellant can move her body and has dexterity in her hands and fingers. Further leading support to the denial for time for this task is that it is not medically necessary as appellant can obtain a bathing transfer bench, which is covered by MassHealth at no cost to appellant. (Testimony). This is a medical service available and suitable for the appellant that is less costly to the MassHealth agency. There was no error in MassHealth denying prior authorization for time for Bathing as their decision is supported by the record.

Grooming:

Grooming, to apply lotion, was requested at 5 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified this request to zero because there was no diagnosis to support the request for assistance with applying lotion. The RN testified credibly that if appellant is seated, she should be able to reach her legs because it does not appear appellant has any upper body impairment that would affect her range of motion. The record states appellant has the range of motion necessary to don and doff upper body clothing. (Ex. 4, p. 8). Additionally, appellant is independent with Mobility and the record states she is "able to move." (Ex. 4, p. 17). I find no error in MassHealth denying time for this task as the record supports their decision.

Dressing:

Dressing was requested at 5 minutes an episode, 1 episode a day, 7 days a week. MassHealth modified this request to zero time. MassHealth's decision is supported by the record. The record shows appellant has the range of motion to don and doff upper body clothing. The record also shows appellant herself reports she can self-manage changing a brief or pad. The record also states appellant seeks prior approval for this task because appellant lacks motivation. I find trying to motivate someone to dress is akin to cueing. Assistance provided in the form of cueing is not covered by MassHealth. I find no error in MassHealth denying time for this task as the record supports their decision.

Appellant has not met her burden and does not require physical assistance with two or more 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

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