

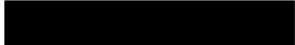
Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part; Dismissed in Part	Appeal Number:	2414346
Decision Date:	12/11/2024	Hearing Date:	10/29/2024
Hearing Officer:	Mariah Burns		

Appearances for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN, for Optum

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:	Approved in Part; Denied in Part; Dismissed in Part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	12/11/2024	Hearing Date:	10/29/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Reps.:	Pro se, et. al.
Hearing Location:	Remote	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 16, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on September 27, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision regarding the scope and amount of assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

The appeal issue is whether MassHealth acted within the scope of the regulations in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is an adult MassHealth member under the age of 65. She was assisted at the hearing by both a Russian-speaking interpreter secured by the Board of Hearings and her neighbor, who speaks both Russian and English. MassHealth was represented by a clinical appeals reviewer and registered nurse for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by telephone. The following is a summary of the testimony and evidence presented:

The appellant suffers from diagnoses of osteoarthritis, severe obesity, deep vein thrombosis in her right leg, chronic lumbar degenerative disk disease, asthma, bilateral hand neuropathy, and a host of other conditions. She resides in a home with her daughter and two minor grandchildren. On August 14, 2024, MassHealth received a prior authorization request on the appellant's behalf for initial implementation of PCA services, requesting a total of 34 hours and 45 minutes of PCA assistance per week. On August 16, 2024, MassHealth modified the request and approved the appellant for 27 hours and 45 minutes of assistance per week with dates of service from August 16, 2024, to August 15, 2025.

Modifications were made in the areas of assistance with stairs, bathing, nail care, dressing/undressing, medication assistance, glucometer checks, assistance with a nebulizer, and housekeeping. After the hearing, the parties agreed to the following modifications:

- **Nail care:** appellant agreed to modification of 10 minutes per week;
- **Dressing/Undressing:** parties agreed to 15 minutes per day, 7 days per week for dressing, and 12 minutes per day, 7 days per week for undressing;
- **Medication Assistance:** Appellant agreed to modification of 15 minutes per week;
- **Glucometer Checks:** Appellant agreed to modification of 3 minutes, 2 times per day, 7 days per week.

Thus, after hearing, disputes remained over assistance with stairs, eating, bathing, nebulizer assistance, and housekeeping.

Stair Assistance

The appellant requested 4 minutes, 2 times per day, 4 days per week for assistance with using the stairs. MassHealth denied this request in full. The MassHealth representative reported that this modification was made because the appellant was approved for time with stair assistance with medical appointment transport, which suggests that the request for stair assistance was for recreation purposes. The MassHealth representative argued that recreation is not a service that is covered by the PCA program. The appellant testified that the only other stairs in her home are for laundry, and the appellant has been approved for PCA assistance with laundry. She reported that

she tries to leave her home every day to walk outside at the suggestion of her doctors, but that she requires physical PCA assistance to get up and down the stairs due to her asthma.

Bathing

The appellant requested 30 minutes per day, 7 days per week for PCA assistance with bathing. MassHealth modified this request to 25 minutes per day. The MassHealth representative reported that this modification was made because the appellant's personal care management (PCM) agency reported that the appellant requires only minimum to moderate assistance with bathing. She explained that someone who requires minimum assistance would need help with 25% of all bathing tasks, while someone with moderate assistance would require help with 50% of all tasks. The appellant testified that, on average, it takes her 30 to 45 minutes to shower, depending on how she is feeling. Her PCA assists her with transferring into the bath and washing her lower extremities because she can't bend. The appellant explained that she is only able to use her left hand due to pain in her right side, so the only task she is able to complete herself is to wash her face. The MassHealth representative argued that the appellant should be able to use her right hand to wash herself if she can use a rollator, which documentation shows she does.

Nebulizer Assistance

The appellant requested 7 minutes, 2 times per day, 7 days per week for assistance with using a nebulizer. MassHealth denied this request in full. The MassHealth representative reported that this was denied because it does not meet professionally recognized standards of healthcare. She explained that the medication used in a nebulizer machine is prescription only, and that no such medication is present on the appellant's medication list provided in her prior authorization request. She testified that this would otherwise be a covered service if the appellant had been prescribed the medication. The appellant believed that her primary care physician did prescribe the medication for use with a nebulizer, and explained that she uses both an inhaler and a nebulizer to treat her asthma.

Housekeeping

The appellant requested 60 minutes per week for assistance with housekeeping. MassHealth originally modified this request to 45 minutes per week due to it being longer than typically required to clean the appellant's space. The MassHealth representative explained that, because the appellant resides with other people, the only assistance that is covered is for cleaning the appellant's sleeping space and bathroom. The MassHealth representative also testified that the kitchen cleaning is covered under the already-approved meal preparation assistance. The appellant reported that she and her daughter share a sleeping space in the living room and a bathroom. She testified that the PCA cleans her space every day.

Findings of Fact

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

1. The appellant is an adult MassHealth member under the age of 65 who suffers from diagnoses of osteoarthritis, severe obesity, deep vein thrombosis in her right leg, chronic lumbar degenerative disk disease, asthma, bilateral hand neuropathy, and a host of other conditions. Exhibit 4, Exhibit 5 at 11-12.

2. On August 14, 2024, MassHealth received a prior authorization request on the appellant's behalf for initial implementation of PCA services, requesting a total of 34 hours and 45 minutes of PCA assistance per week. Testimony, Exhibit 5 at 36.37. On August 16, 2024, MassHealth modified the request and approved the appellant for 27 hours and 45 minutes of assistance week with dates of service from August 16, 2024, to August 15, 2025. Testimony, Exhibit 1, Exhibit 5 at 36.

3. The specific modifications were made in the areas of assistance with stairs, bathing, nail care, dressing/undressing, medication assistance, glucometer checks, assistance with a nebulizer, and housekeeping. Exhibit 1.

4. After hearing testimony, MassHealth and the appellant agreed to the following PCA assistance:

- **Nail care:** appellant agreed to modification of 10 minutes per week;
- **Dressing/Undressing:** parties agreed to 15 minutes per day, 7 days per week for dressing, and 12 minutes per day, 7 days per week for undressing;
- **Medication Assistance:** Appellant agreed to modification of 15 minutes per week;
- **Glucometer Checks:** Appellant agreed to modification of 3 minutes, 2 times per day, 7 days per week.

Testimony.

5. The appellant requested 4 minutes, 2 times per day, 4 days per week for assistance with using the stairs. Exhibit 5 at 15. MassHealth denied this request in full. Exhibit 1. The appellant has exterior stairs and stairs that lead to her laundry machines. Testimony. The appellant has been approved for PCA assistance with laundry and for transportation to her medical appointments. Exhibit 5 at 32, 34. The appellant reported going outside for walks at fresh air at the recommendation of her doctor. Testimony.

6. The appellant requested 30 minutes per day for assistance with bathing. Exhibit 5 at 18. MassHealth modified this request to 25 minutes per day because the appellant requires only moderate assistance with bathing, and 30 minutes is longer than is ordinarily required by someone

with the appellant's needs. Testimony, Exhibit 1. The neuropathy in the appellant's right hand which makes washing herself painful and difficult. She is only able to wash her own face. Testimony.

7. The appellant requested 7 minutes, 2 times per day, 7 days per week for assistance with using a nebulizer machine for her asthma. Exhibit 5 at 29. MassHealth denied this request because the appellant's records do not show that she has a prescription for the medication used in a nebulizer machine. Testimony, Exhibit 1.

8. The appellant requested 60 minutes per week for assistance with housekeeping. Exhibit 5 at 33. MassHealth modified this request to 45 minutes per week due to it being longer than typically required to clean the appellant's space. *Id.*, Exhibit 1. The appellant shares a sleeping space with her daughter/PCA. Testimony. The appellant has been approved for PCA assistance with meal preparation. Exhibit 5 at 32.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹
- (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).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). Members who wish to renew their PCA services must comply with the following process:

To ensure the continuation of PCA services, PCM agencies must request prior

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

authorization from the MassHealth agency at least 21 calendar days before the expiration date of the current prior authorization period. The PCM agency must include in its prior authorization request the documentation described in 130 CMR 422.416(A). The MassHealth agency will continue to pay for PCA services during its review of the new PA request only if the MassHealth agency has received the new prior authorization request at least 21 calendar days prior to the expiration of the current prior authorization period. If the MassHealth agency does not receive the new prior authorization request at least 21 calendar days before the expiration date, the MassHealth agency may stop payment for PCA services after the expiration date.

130 CMR 422.416(C).

It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...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.

...Additional requirements about the medical necessity of MassHealth services are contained in other MassHealth regulations and medical necessity and coverage guidelines.

130 CMR 450.204(A)-(B), (D).

As part of the PCA program, MassHealth does not cover certain activities, including, but not limited to "recreational services...medical services available from other MassHealth providers...assistance

provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members.” 130 CMR 422.412(A),(B),(C) and (F). When determining the appropriate amount of physical assistance required by a MassHealth member, the following assumptions are made:

(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.

.....

(3) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

130 CMR 422.410(C).

An appellant bears the burden of proof at fair hearings “to demonstrate the invalidity of the administrative determination.” *Andrews v. Division of Medical Assistance*, 68 Mass. App. Ct. 228, 231 (2006). The fair hearing decision, established by a preponderance of evidence, is based upon “evidence, testimony, materials, and legal rules, presented at hearing, including the MassHealth agency’s interpretation of its rules, policies and regulations.” 130 CMR 610.085(A).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for nail care, dressing/undressing, medication assistance, and glucometer checks, the appeal with respect to those tasks has resolved and is hereby dismissed in part. As the appellant accepted the modifications made by MassHealth for nail care and glucometer checks, MassHealth is ordered to modify the appellant’s approved hours to include the following, as agreed to at the hearing:

- **Dressing/Undressing:** 15 minutes per day, 7 days per week for dressing, and 12 minutes per day, 7 days per week for undressing;

Thus, remaining at issue in this case is whether the appellant met her burden of proof in establishing medical necessity for more PCA time than MassHealth approved for assistance with stair assistance, bathing, nebulizer assistance, and housekeeping.

Stair Assistance

The appellant argues that she is entitled to coverage of PCA assistance with stairs because she tries to walk outside every day at the suggestion of her doctors. However, MassHealth correctly points out that, based on the current information available, this task would be considered a recreational service. The appellant is already receiving assistance to attend her medical appointments and to do her laundry downstairs, and she reported leaving her apartment only to go on walks. There is

no evidence in the record that these walks are for anything but recreation, which is not covered by the PCA program. *See* 130 CMR 420.412(A). Therefore, the appellant's request for PCA assistance with using the stairs is denied.

Bathing

The appellant argues that she should be granted 30 minutes per day for PCA assistance with bathing. MassHealth contends that the documentation provided by the appellant suggests that she requires, at most, moderate assistance with bathing that would require only 25 minutes of assistance. However, the MassHealth Time-For-Task guidelines indicate that the average time estimate for an individual who requires moderate assistance with bathing is 30 minutes. *See* Exhibit 6 at 4. Based on that, and the appellant's credible testimony that her hand neuropathy makes it painful to use her right hand to wash herself, I find that 30 minutes per day is a reasonable amount of time for PCA assistance with bathing for someone with the appellant's needs. Thus, based on the testimony, I order that the appellant be approved for 30 minutes per day, 7 days per week for PCA assistance with bathing. The appeal with respect to bathing is therefore approved.

Nebulizer Assistance

The appellant requests that she be given 7 minutes, 2 times per day, 7 days per week for assistance using her nebulizer machine. MassHealth argues that this is counter to professionally recognized standards of care, because there is no documentation on file that indicates that the appellant has been prescribed the medication used in a nebulizer. Because I credit the MassHealth representative's testimony regarding both of those points, and because PCA assistance must meet professionally recognized standards of care (*See* 130 CMR 450.204(B)), I find that the appellant has not demonstrated that she meets the medical necessity requirements to qualify for PCA assistance with using a nebulizer. The appeal with respect to that task is therefore denied.

Housekeeping

The appellant argues that she requires 60 minutes for weekly assistance with housekeeping. MassHealth contends that 45 minutes is sufficient, because the appellant would only be entitled to coverage of assistance with cleaning her sleeping area and her bathroom. It is true that the PCA regulations typically require family members with whom a member is living to be responsible for providing assistance with IADLs unless there are extenuating circumstances with the family or the member's needs. In this case, by approving the appellant for some assistance with housekeeping, MassHealth has taken those extenuating circumstances into consideration. The appellant has provided no evidence of reasons why the appellant's living space requires more time for cleaning than MassHealth has offered. For those reasons, I find that the appellant has not demonstrated, by a preponderance of the evidence, that it is medically necessary for her to receive 60 minutes for

assistance with housekeeping. The appeal with respect to that task is therefore denied.

For the foregoing reasons, the appeal is dismissed with respect to nail care, dressing/undressing, medication assistance, and glucometer checks. With respect to bathing, the appeal is hereby approved. With respect to stair assistance, nebulizer assistance, and housekeeping, the appeal is hereby denied.

Order for MassHealth

Modify the appellant's approved PCA hours to include the following assistance, retroactive to August 16, 2024:

- **Bathing/Quick Washing:** 30 minutes per day, 7 days per week;
- **Dressing/Undressing:** 15 minutes per day, 7 days per week for dressing, and 12 minutes per day, 7 days per week for undressing.

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.

Implementation of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Mariah Burns
Hearing Officer
Board of Hearings

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