

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2416224
Decision Date:	11/26/2024	Hearing Date:	11/21/2024
Hearing Officer:	Amy B. Kullar, Esq.		

Appearances for Appellant:




Appearance for MassHealth:

Kelly Rayen, R.N., Clinical Reviewer, Optum



*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; Personal Care Attendant Services
Decision Date:	11/26/2024	Hearing Date:	11/21/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Reps.:	
Hearing Location:	Quincy Harbor South 2 (Telephone)	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 September 26, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.410(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on October 22, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict or modify a member's 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 was acting within its discretion in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant is a MassHealth member between the ages of 18-65 and was represented at hearing by her court-appointed guardians, who are also her mother and father. The parties' testimony and record evidence are summarized as follows:

The appellant's medical history includes a primary diagnosis of [REDACTED]. The appellant also suffers from [REDACTED] and daily "minor" seizures, and she is legally blind. The appellant is developmentally delayed; cognitively, she is approximately age three. Testimony and Exhibit 5. The appellant resides at home with her parents/legal guardians, and attends her local public high school. Testimony and Exhibit 5. The appellant is categorized as "dependent" on her PCA to accomplish all activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Exhibit 5.

The appellant was reevaluated for PCA services on September 18, 2024, and on September 25, 2024, her PCM agency, Tempus Unlimited, Inc., requested 40 hours and 15 minutes of PCA services per week for the service period of 10/14/2024-10/13/2025. MassHealth modified this request on September 26, 2024, to 37 hours and 45 minutes of PCA services per week for the service period of 10/14/2024-10/13/2025. Testimony, Exhibit 5. MassHealth made one (1) modification related to PCA assistance with Toileting: Bladder care. Testimony.

Toileting: Bladder Care

The MassHealth representative testified that the appellant's PCM agency requested fifteen minutes per episode, six times per day, seven days per week (15x6x7) for each episode of toileting: bladder care. MassHealth modified this request to fifteen minutes per episode, four times per day, five days per week (15x4x5) for each episode of bladder care during the school week, and fifteen minutes per episode, six times per day, two days per week (15x6x2) to cover the weekends at home. Testimony, Exhibit 5. The MassHealth representative explained that that this category was modified because the frequency requested for assistance with bladder care is longer than is ordinarily needed for someone with the appellant's care needs. Testimony. The MassHealth representative further explained that the "consumer goes to school 5 days a week, you can see the rest of the prior authorization, it reflects the days she is at school." Testimony. The MassHealth

representative stated that this is the same modification in this category as last year, except each episode receives five minutes more this year. Testimony.

The appellant's mother testified that the reality of the situation is that the appellant has seizures every day; she has not had a [REDACTED] seizure in nearly 1.5 years. Testimony. The major seizures are controlled with medication, but she is having "subclinical seizures" every day.² The appellant can be on the toilet and the main thing that the PCA has to do is make sure the appellant does not fall off the toilet. Testimony. The appellant's mother stated that she has injured her own arms and shoulders due to the physical assistance she personally gives the appellant with PCA tasks, including toileting, and that she is undergoing surgery next month due to these injuries. Testimony.

The MassHealth representative responded that the regulations do not allow surrogates or legal guardians to be compensated as PCAs. MassHealth modified the prior authorization for the appellant based on the time for task needed for each task requested. Testimony. PCA assistance with toileting for the appellant is the same as last year with 5 minutes more per episode. This category was modified to take into account the time that the appellant is at school without PCA assistance. Testimony. The MassHealth representative urged the appellant's representatives to review the prior authorization request submitted by the appellant's PCM agency so that they could see that if a task was not requested for the appellant, or not requested properly for her needs, then the appellant's representatives/surrogates may file a request for an adjustment with the PCM. Testimony. The MassHealth representative closed her testimony by stating that PCA assistance is for performing a task for a consumer – it does not include monitoring or supervision. Testimony.

Findings of Fact

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

1. Appellant is a MassHealth member between the ages of 18 and 65, and lives in the community with her parents, who are also her legal guardians.
2. Appellant has a primary diagnosis of [REDACTED]. The appellant also suffers from [REDACTED] seizures and daily "subclinical" seizures, and she is legally blind. The appellant is developmentally delayed; cognitively, she is approximately age three. Testimony and Exhibit 5.

² "A seizure is unusual electrical activity in the brain. These impulses often cause many symptoms, such as jerking of the body or losing consciousness. When the symptoms of the seizure are not noticeable it is known as a subclinical seizure." Health Library, Cedars-Sinai. Subclinical Seizures. (cedars-sinai.org/health-library/diseases-and-conditions/s/subclinical-seizures.html) Accessed 11/26/2024.

3. On September 25, 2024, appellant's PCM agency sent MassHealth a PA request seeking 40 hours and 15 minutes per week for the service period of 10/14/2024-10/13/2025. Testimony and Exhibit 5.
4. On September 26, 2024, MassHealth modified the request in one (1) category and approved the appellant for 37 hours and 45 minutes per week for the service period of 10/14/2024-10/13/2025; specifically, by modifying the time for "Toileting: bladder care." Exhibits 1 and 5.
5. The appellant seeks time for PCA assistance with Toileting: bladder care as follows: fifteen minutes per episode, six times per day, seven days per week (15x6x7) (630 minutes per week). Testimony and Exhibit 5.
6. MassHealth approved fifteen minutes per episode, four times per day, five days per week (15x4x5) for each episode of bladder care during the school week, and fifteen minutes per episode, six times per day, two days per week (15x6x2) to cover the weekends at home for bladder care. Testimony and Exhibit 5.

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 of 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.

See 130 CMR 422.403(C).

Here, there is no dispute that Appellant meets all the prerequisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive PCA assistance to meet her care needs. The requested services must also be medically necessary for the prior authorization request to be approved. 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 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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 Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)

(C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204.

Pursuant to 130 CMR 422.410(A), 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.

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

- (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.**

See 130 CMR 422.412 (emphasis added).

The Appellant requested fifteen minutes per episode, six times per day, seven days per week (15x6x7) (630 minutes per week) for assistance with toileting: bladder care. MassHealth modified this request to fifteen minutes per episode, four times per day, five days per week (15x4x5) for each episode of bladder care during the school week, and fifteen minutes per episode, six times per day, two days per week (15x6x2) to cover the weekends at home. MassHealth correctly modified this request because the record shows that appellant attends high school, and MassHealth does not pay for PCA services during school hours, and the appellant resides in a household with both of her parents, who are also her legal guardians. Although the appellant's

mother credibly testified to the issues that she has toileting the appellant when the appellant is not at school, the regulations direct that MassHealth does not cover any services provided by family members or surrogates.

As to the Appellant's request for PCA assistance with toileting: bladder care, this 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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

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