

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2417457
Decision Date:	1/29/2025	Hearing Date:	12/16/2024
Hearing Officer:	Christopher Jones		

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Donna Burns, 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:	Approved	Issue:	Prior Authorization; PCA; MD Transportation
Decision Date:	1/29/2025	Hearing Date:	12/16/2024
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	Pro se
Hearing Location:	Telephonic	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 October 29, 2024, MassHealth modified the appellant's request for personal care attendant services, allowing less time than was requested. (Exhibit 1; 130 CMR 422.410.) The appellant filed this timely appeal on November 13, 2024. (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth is correct, pursuant to 130 CMR 422.000, in determining that the appellant should be allowed less time for PCA assistance than requested.

Summary of Evidence

The appellant's primary diagnosis is multiple sclerosis. On or around October 24, 2024, the appellant's personal care management ("PCM") agency, [REDACTED] submitted a reevaluation for personal care attendant ("PCA") services. This request sought 71 hours and 15

minutes per week of PCA services (4,272 minutes per week, including 840 nighttime minutes). The prior authorization period for this request runs from November 17, 2024, through November 16, 2025.

MassHealth made one modification to the appellant's requested time, allowing 69 hours and 45 minutes per week (4,180 per week including 840 nighttime minutes). The appellant requested 100 visits to a multiple sclerosis therapy clinic (50 visits for physical therapy and 50 visits for occupational therapy) across the prior authorization period of 52.14 weeks (153 minutes per week). MassHealth approved 40 visits total across 52.14 weeks (61 minutes per week). MassHealth stated on its notice that the time for assistance with transportation to these appointments were considered "social services (such as respite care, babysitting, or vocational rehabilitation) and are not covered through the personal care attendant ... program." MassHealth's representative testified that all other aspects of the appellant's request were approved, including the roundtrip travel time for assisting the appellant to the therapy appointments and the time to transfer into and out of the office. The round-trip travel time including transfers was 80 minutes per appointment.

MassHealth's representative testified that the person who reviewed this request likely chose this explanation because therapy is expected to result in improvement and discharge. One hundred therapy appointments are not normally anticipated in advance, as it indicates no improvement is expected. A related reason for this modification, suggested by MassHealth's representative, was that MassHealth only authorizes 20 visits at a time to a therapist. MassHealth's representative argued that visits in excess of 20 visits could therefore be considered recreational or vocational rehabilitation. MassHealth's representative testified that the appellant could request an adjustment to her prior authorization request if she was approved for more visits.

The appellant testified that her condition will not improve with occupational or physical therapy. Rather, these therapy appointments are meant to slow her deterioration. The appellant feels her therapy appointments are medically necessary and not recreational or vocational. The appellant submitted a letter from her physical therapist opining that she would suffer "a significant decline in physical outcome data and functional capacity," in the absence of ongoing therapy. This letter goes on to request that additional PCA time be approved for the PCA to attend therapy appointments with the appellant, because the appellant requires physical assistance using the bathroom, and the therapy facility is not staffed to assist patients in the rest room. The appellant also testified that she has not requested that MassHealth pay for these therapy appointments; she is paying for them out-of-pocket. The appellant explained that the therapy had been covered by her primary insurance, but the insurance denied ongoing therapy months ago.

MassHealth's representative testified that MassHealth does not pay for transportation to appointments that are not covered by MassHealth. To support this assertion, MassHealth's representative referenced the regulations governing PT-1s, prescriptions for transportation. These regulations require that a member's transportation be to a location at which the member is receiving MassHealth covered services.

The appellant responded that the therapist accepts MassHealth, and MassHealth used to pay her copays. Once her primary insurance stopped covering the therapy appointments, however, MassHealth stopped covering the co-payments, telling the appellant she needed to address coverage with her primary insurer first. The appellant testified that she would go back and re-request coverage for the therapy appointments, and she would appeal if the coverage was denied again through both insurances. She testified that MassHealth has paid this provider in the past, and MassHealth covered PCA travel time to this provider in the past.

Finally, MassHealth's representative argued that the appellant's request should be modified because the therapy facility should have people on hand to help her to the bathroom. The appellant responded that her therapist suggested an increase in PCA time to stay with her during therapy, but the request was just for transportation time.

Findings of Fact

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

- 1) On or around October 24, 2024, the appellant's personal care management ("PCM") agency, [REDACTED] submitted a reevaluation for personal care attendant ("PCA") services. This request sought 71 hours and 15 minutes per week of PCA services (4,272 minutes per week, including 840 nighttime minutes). The prior authorization period for this request runs from November 17, 2024, through November 16, 2025. The appellant's primary diagnosis is multiple sclerosis. (Exhibit 5, pp. 2, 6-8.)
- 2) The appellant submitted a letter from her physical therapist opining that she would suffer "a significant decline in physical outcome data and functional capacity," in the absence of ongoing therapy. (Exhibit 5, p. 47.)
- 3) MassHealth made one modification to the appellant's requested time. The appellant requested 100 visits to a therapy clinic (50 visits for physical therapy and 50 visits for occupational therapy). MassHealth approved 40 visits total. The reason for modification given on MassHealth's notice is that the request is for is non-covered "social services (such as respite care, babysitting, or vocational rehabilitation) and are not covered through the personal care attendant ... program." (Testimony by MassHealth's representative; Exhibit 5, pp. 4, 31.)
- 4) MassHealth's representative alternatively testified that MassHealth only authorizes 20 therapy appointments at a time. Therefore, the appellant would need to request an adjustment after she used up the approved visits. (Testimony by MassHealth's representative.)
- 5) As a third argument, MassHealth's representative testified that PCA assistance with medical transportation is only authorized when the provider could be visited with a PT-1.

MassHealth is not currently paying for the therapy visits. (Testimony by MassHealth's representative.)

- 6) The appellant's provider has been paid by MassHealth in the past, and MassHealth authorized the appellant's PCA to bring her to this therapist in the past. The appellant's primary insurance stopped paying for the appointments and the appellant has not appealed the denial of coverage. (Testimony by the appellant.)

Analysis and Conclusions of Law

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416.) The regulations define a service as "medically necessary" if 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." (130 CMR 450.204(A) (emphasis added).) "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." (130 CMR 450.204(B).) A provider must make those records, including medical records, available to MassHealth upon request. (130 CMR 450.204(B)); 42 U.S.C. § 1396a(a)(30), 42 CFR §§ 440.230, 440.260.)

MassHealth generally covers PCA services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living ("ADLs") and instrumental activities of daily living ("IADLs"), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).) Members are responsible for hiring and training their own PCAs. (130 CMR 422.420(A)(6); see also 130 CMR 422.422(A) (PCM agency must confirm member is able to employ and direct PCAs, or else have a surrogate).)

MassHealth limits what services it covers, within its broad definitions of ADLs and IADLs. For instance, MassHealth only covers the "activity time" of "providing assistance." (130 CMR 422.411(A).) This means that MassHealth does not cover downtime that may exist within a task. Further, there are certain services that MassHealth will not cover:

- (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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;

(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;

(G) surrogates, as defined in 130 CMR 422.402; or

(H) PCA services provided to a member without the use of [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

IADLs include:

(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.

(130 CMR 422.410(B) (emphasis added).)

MassHealth modified the requested transportation services from 100 visits per year to 40 visits per year. MassHealth has offered three rationales for this modification.

First, the notice modified the time because the requested services were noncovered “social services” MassHealth argued that therapy is meant to result in improvement and 100 visits does not anticipate improvement.

Second, MassHealth’s representative testified that MassHealth only authorizes 20 therapy appointments at a time. If the appellant were having MassHealth cover these appointments, the

appellant would need to seek prior authorization for MassHealth to approve additional therapy appointments, and then seek an adjustment request. The legal justification for this argument is:

433.408: Prior Authorization, Orders, Referrals, and Prescriptions

...

(E) Therapy Services Requiring Prior Authorization. Prior authorization is required for the following therapy services provided by any MassHealth provider to eligible MassHealth members.

(1) more than 20 occupational-therapy visits or 20 physical-therapy visits, including group-therapy visits, for a member within a 12-month period; and

(2) more than 35 speech/language therapy visits, including group-therapy visits, for a member within a 12-month period.

(130 CMR 433.408(E).)

Third, MassHealth's representative testified that PCAs may only be paid for bringing a member to services authorized by MassHealth. To support this argument, MassHealth notes the transportation service regulations only approve transportation prescriptions "when such services are covered under the member's MassHealth coverage type and only when members are traveling to obtain medical services covered under the member's coverage type (*see* 130 CMR 450.105: *Coverage Types*)."

(130 CMR 407.411.) The prescription for transportation must also document that the "member will receive a medically necessary service **covered by MassHealth at the trip's destination**." (130 CMR 407.421(C)(3)(a) (emphasis added).)

MassHealth's reasoning is unsupported. MassHealth offered no medical argument to support its assertion that 100 therapy services are "vocational" or "social services", rather than medically necessary to slow the worsening of the appellant's documented medical condition. The appellant provided a letter of medical necessity to support that such therapy is instrumental in slowing down her deterioration from multiple sclerosis. The PCA regulations allow coverage for PCA assistance with "transportation: accompanying the member to medical providers". Nothing in the PCA regulations limits this assistance to transportation to only appointments covered by MassHealth. MassHealth identified no requirement that PCA members must seek approval for either prescribed transportation pursuant to 130 CMR 407.000, or prior approval for therapy appointments pursuant to 130 CMR 433.000, before having their PCA assistance with medical transportation approved. Nor are there cross references in the PCA regulations to the requirements in either 130 CMR 407.000 or 433.000.¹ MassHealth has covered PCA transportation to this provider in the past,

¹ There are generally applicable Administrative and Billing regulations at 130 CMR 450.000 that define "providers" to be "an individual, group, facility, agency, institution, organization, or business that furnishes medical services **and participates in MassHealth under a provider contract with the MassHealth agency**." (130 CMR 450.101 (emphasis added).) Additional provider eligibility rules

and it continues to do so here. If MassHealth's justification is that PCA assistance with transportation is only allowed to medical appointments paid for by MassHealth, no visits should have been authorized, whereas here, MassHealth has authorized 20 visits per therapy. For these reasons, this appeal is APPROVED.

Order for MassHealth

Restore all time requested for PCA assisted medical transportation. Authorize the requested 71 hours and 15 minutes per week of PCA services, starting November 17, 2024.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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

exist to ensure providers are "fully licensed, certified, or registered as an active practitioner by the agency or board overseeing the specific provider type," and otherwise providing medically appropriate and necessary services. (See 130 CMR 450.212.) This decision takes no position on whether MassHealth may deny PCA transportation services to a provider because they are not a MassHealth-contracted provider, as there is insufficient evidence in the record to conclude that the appellant's therapist is not contracted with MassHealth.