

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part	Appeal Number:	2155435
Decision Date:	10/04/2021	Hearing Date:	8/25/2021
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:




Appearance for MassHealth:

Mary-Jo Elliott, 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:	Approved in part	Issue:	PCA services
Decision Date:	10/04/2021	Hearing Date:	8/25/2021
MassHealth's Rep.:	Mary-Jo Elliott	Appellant's Rep.:	
Hearing Location:	Quincy (remote)	Aid Pending:	Yes

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

By notice dated June 21, 2021, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on July 12, 2021. Exhibit 2. 130 CMR 610.015(B). Denial of prior authorization is a valid basis for appeal. 130 CMR 422.417(B) and 130 CMR 610.032. Appellant was entitled to retain his prior level of services pending the outcome of the hearing. 130 CMR 610.036.

Action Taken by MassHealth

MassHealth denied Appellant's request for prior approval of PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying Appellant's prior authorization request for PCA services.

Summary of Evidence

A registered nurse and clinical appeals reviewer represented MassHealth by phone and testified as follows. Appellant is a teenage minor under the age of 18 with diagnoses including global developmental delays, hypoplastic heart syndrome, celiac disease, gait abnormality, and attention deficit hyperactivity disorder (ADHD). Exhibit 4 at 8.

On June 9, 2021, The Arc of the South Shore, Appellant's Personal Care Management Agency (PCMA), submitted a re-evaluation for PCA services, requesting 32.25 day/evening hours per week of PCA services on Appellant's behalf. On June 21, 2021, MassHealth modified Appellant's request and approved 28.25 day/evening PCA hours per week. The dates of service were from August 20, 2021 through August 19, 2022. Exhibit 1. In the previous prior authorization period, Appellant was approved for 28.25 hours but received 28.5 hours per week due to a mathematical error.

MassHealth modified the requested PCA hours for two instrumental activities of daily living (IADLs): meal preparation and housekeeping. For housekeeping, Appellant requested 60 minutes weekly. Exhibit 4 at 24. MassHealth denied this request. After discussion at hearing, MassHealth restored the time modified for housekeeping, based on testimony described *infra*.

In the area of meal preparation, Appellant requested 15 minutes for breakfast, 20 minutes for lunch, 25 minutes for dinner, and 10 minutes for snacks daily, for a total of 70 minutes per day. *Id.* at 22-23. MassHealth approved a total of 45 minutes per day. MassHealth had approved 45 minutes for meal preparation at a prior hearing. The MassHealth representative testified that generally, assistance with IADLs for minor children is not approved, as these tasks fall under parental responsibility. However, MassHealth will take individual circumstances under consideration. Here, MassHealth approved 45 minutes per day for meal preparation due to Appellant's severe celiac disease and risk of cross-contamination which could cause serious illness. Appellant's meals must be prepared separately from the rest of the family and everything must be extensively cleaned. MassHealth did not see justification for greater than 45 minutes of assistance, particularly the 10 minutes of assistance requested for snacks.

Appellant's mother testified that Appellant's celiac disease is so severe, a mere crumb of gluten can make him severely sick. It takes a long time to prepare meals as a result, as every utensil, pan and plate must be cleaned as well as the preparation area (such as counters, the sink, the toaster, and the microwave). Appellant's mother testified that 45 minutes is not enough time to safely prepare Appellant's meals and sufficiently clean the area before and after. The process of preparing Appellant's meals typically involves first cleaning the sink, stove, and countertop; cleaning off the silverware and utensils to be used; rewashing the pan before preparing Appellant's meal; cleaning out the toaster oven if Appellant is having a bagel; washing the plate before putting Appellant's food on it; and then serving Appellant's food. Though Appellant is a teenager, he cannot participate with the meal preparation task due to new diagnoses, including a spinal surgery and severe breathing problems.¹

The MassHealth representative responded by approving 60 minutes per week for assistance with housekeeping, as this would cover the added cleaning needs Appellant's condition presents to the household. The MassHealth representative argued that meal preparation in light of the severity of Appellant's illness must remain a parental responsibility, and the time approved is for the PCA to assist a parent with that task. The MassHealth representative opined that a less costly approach

¹ Appellant's mother was advised that new diagnoses that affect Appellant's ability to perform activities of daily living (ADLs) can be reviewed at any time as part of a request for an adjustment of services requested by the PCMA, which would be reviewed by MassHealth in an appealable action. 130 CMR 422.416(B).

would be to have dedicated meal preparation tools for Appellant's exclusive use to avoid the risk of cross-contamination. Appellant's mother argued that 15 minutes per meal (the approved 45 minutes total) is not enough time to prepare food for a healthy individual, let alone a person with a severe allergy. Appellant's mother argued that due to the pandemic, Appellant's doctor has ordered Appellant's family to take extra precautions, not leave the house, and to scrub the groceries as they come into the house.

Findings of Fact

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

1. On June 9, 2021, Appellant's PCMA submitted a re-evaluation for PCA services, requesting 32.25 day/evening hours per week of PCA services on Appellant's behalf.
2. On June 21, 2021, MassHealth modified Appellant's request and approved 28.25 day/evening PCA hours per week for dates of service from August 20, 2021 through August 19, 2022. Exhibit 1.
3. In the previous prior authorization period, Appellant was approved for 28.25 hours but received 28.5 hours per week due to a mathematical error.
4. Appellant filed a timely appeal on July 12, 2021 and was entitled to retain his prior level of services pending the outcome of the hearing. Exhibit 2.
5. Appellant is a teenage minor under the age of 18 with diagnoses including global developmental delays, hypoplastic heart syndrome, celiac disease, gait abnormality, and attention deficit hyperactivity disorder (ADHD). Exhibit 4 at 8.
6. In the area of meal preparation, Appellant requested 15 minutes for breakfast, 20 minutes for lunch, 25 minutes for dinner, and 10 minutes for snacks daily, for a total of 70 minutes per day. *Id.* at 22-23.
7. MassHealth modified the request, approving a total of 45 minutes per day.
8. For housekeeping, Appellant requested 60 minutes weekly. Exhibit 4 at 24.
9. MassHealth initially denied this request, but restored it in full at hearing.
10. Appellant is not able to participate in the meal preparation task.

Analysis and Conclusions of Law

Pursuant to 130 CMR 422.403(C), MassHealth will pay for PCA services for members appropriately cared for at home when 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/grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

The requested services must also be medically necessary for prior authorization to be approved. Pursuant to 130 CMR 450.204(A), a service is medically necessary if it is:

- (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.

MassHealth covers assistance with the following tasks under the PCA program:

422.410: Activities of Daily Living and Instrumental Activities of Daily Living

(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 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.

(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 personal care services; and

(c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care agency must assume the following.

(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.

(2) When a member is living with one or more other members who are authorized for MassHealth personal care services, PCA time for homemaking tasks (such as shopping, housekeeping, laundry, and meal preparation and clean-up) must be calculated on a shared basis.

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

According to 130 CMR 422.412(F), MassHealth does not cover as part of the PCA program services that are provided by family members. A family member is defined in the regulations as “the spouse of the member, the parent of a minor member, including an adoptive parent, or any

legally responsible relative.” 130 CMR 422.402.

MassHealth does not cover services normally provided by a parent. Typically, a teenager would likely be able to perform some of his own meal preparation (such as making a sandwich or preparing breakfast), and remaining meal preparation would be the responsibility of a parent. Therefore, it is not inappropriate for Appellant to have PCA assistance with some of Appellant’s meal preparation task. Here, Appellant sought 70 minutes daily for assistance with meal preparation and MassHealth approved 45 minutes. Appellant’s mother argued that Appellant requires more time than 15 minutes per meal due to his severe celiac disease and the need to clean everything thoroughly to avoid the risk of cross-contamination. MassHealth’s approval of 60 minutes per week for housekeeping was approved based on Appellant’s individual circumstances.

While Appellant has not presented specific data as to how much additional time for meal preparation is needed, the prior authorization request included a request for a daily snack, which is not unreasonable. Based on the evidence provided, an additional 5 minutes per day for PCA assistance for a daily snack is reasonable under the circumstances, as Appellant cannot participate. This appeal is approved in part.

Order for MassHealth

Modify the approved daily meal preparation assistance from 45 minutes to 50 minutes and recalculate the weekly hours of PCA assistance with that modification for the dates of service of the prior authorization period.

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.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc: Optum MassHealth LTSS