

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part Denied in part	Appeal Number:	2178548
Decision Date:	2/02/2022	Hearing Date:	12/14/2021
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, 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 in part Denied in Part	Issue:	PCA -Reevaluation
Decision Date:	2/02/2022	Hearing Date:	12/14/2021
MassHealth's Rep.:	Mary Jo Elliot, RN	Appellant's Rep.:	██████
Hearing Location:	Tewksbury		

Authority

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

Jurisdiction

Through notice dated October 12, 2021, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed this appeal in a timely manner on November 5, 2021 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. MassHealth submitted a copy of the prior authorization packet which includes a copy of the written prior authorization request and a PCA re-evaluation form dated September 14, 2021 (Exhibit B). Appellant filed no documentation other than the Fair Hearing Request form (Exhibit A).

MassHealth was represented by a registered nurse who serves as the clinical appeals reviewer. The MassHealth representative testified that Appellant's PCA provider agency submitted a prior authorization request seeking to renew personal care attendant (PCA) services for another year. The MassHealth representative reviewed portions of the request noting that Appellant is [REDACTED] years old, nonverbal with a severe seizure disorder. Appellant regularly takes Keppra 500 milligrams twice a day as well as Benadryl. She also takes as-needed Pulmocort nebulizers, oxygen and albuterol nebulizers for wheezing (Exhibit B, pages 8 and 9).

The request sought 90 hours and 30 minutes per week for 39.14 school weeks and 98 hours and 15 minutes per week for 13 vacation weeks as well as two overnight hours for both segments. MassHealth modified the request and approved 66 hours and 30 minutes per week for 39.14 school weeks and 69 hours and 45 minutes per week for 13 vacation weeks as well as the requested two overnight hours per night for both segments.

According to the MassHealth representative, MassHealth modified four areas of the request denying all or a portion of the time requested under oral feeding, meal preparation, shopping and equipment maintenance. After the parties exchanged testimony MassHealth agreed to restore all time requested for shopping, but the parties continue to dispute the remaining three modifications.

Oral Feeding

The MassHealth representative testified that Appellant requested time to assist with oral feedings at 30 minutes, three times per day, five days a week and 30 minutes, four times per day, two days per week. MassHealth denied all time requested to assist with oral feeding. The MassHealth representative explained that Appellant primarily ingests food and nutrition via G-tube and all time requested for G-tube feedings was allowed. The MassHealth representative also explained that given Appellant's condition and the need for her to receive nutrition primarily via G-tube, it is not medically safe for the PCA's to be facilitating oral feedings due to the risk of aspiration.

Appellant was represented by her mother who is also her legal guardian. Appellant's mother testified that Appellant has had a swallow test and has been approved for oral intake. She also testified that the PCA's are trained and they have been competently assisting Appellant with her oral feedings at home and trained staff also assist Appellant

with her oral feeding during school. Appellant's mother testified that it takes a long time for Appellant to eat, but the PCA's are patient with her and are trying to train Appellant to take food orally. Appellant's mother acknowledged that Appellant has a lot of swallowing deficits and it takes time for her to swallow. Appellant's mother expressed the desire that hopefully one day Appellant will be able to eat food orally.

In response, the MassHealth representative testified that under the PCA program, time can only be approved for physical hands-on assistance which does not include time for waiting, queuing or verbal direction and instruction. Nevertheless, because Appellant is taking in some oral food to supplement her G-tube feedings, MassHealth was willing to approve 10 minutes, three times per day five days per week and 10 minutes, four times per day to times per week.

Appellant's mother stated that 10 minutes would not be sufficient and the requested 30 minutes per incident is required. She reemphasized that because of Appellant's swallowing deficits, she will often not swallow and the entire feeding takes a long time – much more than ten minutes.

Meal Preparation

The MassHealth representative testified that Appellant requested time to assist with meal preparation as follows: breakfast 15 minutes, seven days per week; lunch 25 minutes, seven days per week; dinner 45 minutes, seven days per week and snacks five minutes, once per day, seven days per week. MassHealth denied all time requested to assist with meal preparation because it had denied time for oral feedings. The MassHealth representative also stated that the task was the responsibility of Appellant's legal guardian insofar as Appellant lives with her legal guardian.

The MassHealth representative further explained that the maximum amount of time customarily approved to assist with meal preparation for someone who requires maximum assistances and consumes three full meals a day is 90 minutes per day. Here Appellant is requesting 85 minutes per day when she is only consuming food orally as supplemental nutrition.

Appellant's mother re-stated that Appellant is taking food orally as a supplement to her G-tube feedings. She stated that the food does need to be cooked and pureed and asserted that the times requested were appropriate.

Equipment Maintenance

The MassHealth representative testified that Appellant requested 112 minutes per week (16 minutes per day) for equipment maintenance. MassHealth approved 35 minutes per week (five minutes per day).

The MassHealth representative explained that the PCA is a compensated for simple cleaning and wiping down of equipment. They are not compensated under the PCA program for inspecting and repairing equipment which is considered beyond the capabilities of a PCA. The MassHealth representative testified that five full minutes per day should be more than adequate to give Appellant's equipment a quick wipe down every day.

Appellant's mother testified that Appellant has a manual wheelchair, rollator, shower chair and a stander. She explained that the equipment has to be wiped down due to things such as food spillage and drooling. She also explained that the equipment is wiped down more often than usual due to the Covid situation. She testified that one of the PCA's got Covid, so they have to be extra careful in wiping down the equipment. Appellant's mother asserted that 35 minutes per week is not sufficient.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Appellant's PCA provider agency submitted a written prior authorization request seeking to renew personal care attendant (PCA) services for another year.
2. The request was supported by a PCA re-evaluation form dated September 14, 2021 (Exhibit B).
3. Appellant is [REDACTED] years old, nonverbal with a severe seizure disorder.
4. Appellant regularly takes Keppra 500 milligrams twice a day as well as Benadryl and also takes as-needed Pulmocort nebulizers, oxygen and albuterol nebulizers for wheezing (Exhibit B, pages 8 and 9).
5. The request sought 90 hours and 30 minutes per week for 39.14 school weeks and 98 hours and 15 minutes per week for 13 vacation weeks as well as two overnight hours for both segments.
6. MassHealth modified the request and approved 66 hours and 30 minutes per week for 39.14 school weeks and 69 hours and 45 minutes per week for 13 vacation weeks as well as the requested two overnight hours per night for both segments.
7. MassHealth modified four areas of the request denying all or a portion of the time requested under oral feeding, meal preparation, shopping and equipment maintenance.
8. After the parties exchanged testimony MassHealth agreed to restore all time

requested for shopping, but the parties continued to dispute the remaining three modifications.

9. Appellant requested time to assist with oral feedings at 30 minutes, three times per day, five days a week and 30 minutes, four times per day, two days per week.
10. MassHealth denied all time requested to assist with oral feeding.
11. Appellant primarily ingests food and nutrition via G-tube and all time requested for G-tube feedings was allowed.
12. MassHealth believed that given Appellant's condition and the need for her to receive nutrition primarily via G-tube, it is not medically safe for the PCA's to be facilitating oral feedings due to the risk of aspiration.
13. At hearing, MassHealth learned that Appellant has had a swallow test and has been approved for oral intake.
14. At hearing, MassHealth learned that the PCA's are trained and they have been competently assisting Appellant with her oral feedings.
15. It takes a long time for Appellant to eat, but the PCA's are patient with her and are trying to train Appellant to take food orally.
16. Appellant has a lot of swallowing deficits and it takes time for her to swallow.
17. At hearing MassHealth was willing to approve 10 minutes, three times per day five days per week and 10 minutes, four times per day to times per week.
18. Appellant requested time to assist with meal preparation as follows: breakfast 15 minutes, seven days per week; lunch 25 minutes, seven days per week; dinner 45 minutes, seven days per week and snacks five minutes, once per day, seven days per week.
19. MassHealth denied all time requested to assist with meal preparation because it had denied time for oral feedings and because the task was the responsibility of Appellant's legal guardian insofar as Appellant lives with her legal guardian.
20. The maximum amount of time customarily approved to assist with meal preparation for someone who requires maximum assistances and consumes three full meals a day is 90 minutes per day.
21. Appellant's food needs to be cooked and pureed.
22. Appellant requested 112 minutes per week (16 minutes per day) for equipment

maintenance.

23. MassHealth approved 35 minutes per week (five minutes per day).

24. PCA's are compensated for simple cleaning and wiping down of equipment; they are not compensated under the PCA program for inspecting and repairing equipment which is considered beyond the capabilities of a PCA.

25. Appellant has a manual wheelchair, rollator, shower chair and a stander.

26. Five full minutes per day is sufficient to give the equipment that Appellant used on a given day a quick wipe down.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)).

Oral Feeding

During the hearing, Appellant's mother demonstrated a lack of understanding about what is and is not compensated under the PCA program. The task of assisting with oral feeding as described by the mother involved a significant amount of time involving waiting, queuing and instruction all of which is not compensated under the PCA program (130 CMR 422.412(C)).

Appellant's mother did verify that Appellant is taking in some food orally to supplement her primary G-tube feedings with the hope of learning to be able to take food orally on her own one day. For this MassHealth allowed 10 minutes at the frequency requested. This amount is meant to compensate the PCA for the actual hands-on assistance being provided for a task. Appellant's mother asserts that the entire task a total of 30 minutes. The approved ten minutes: therefore, constitutes one-third of the entire task. This is reasonable.

Meal Preparation

MassHealth denied all time requested to assist with meal preparation because it had denied time for oral feedings and because the task was the responsibility of Appellant's legal guardian insofar as Appellant lives with her legal guardian.

At hearing, MassHealth approved some time to assist with oral feeding. Additionally, MassHealth is misinterpreting the regulation concerning PCA time when a member resides with a parent or legal guardian. When read properly, regulation 130 CMR 422.402 is

referring only to spouses and minor children. The regulation does not apply to adults residing with a parent or legal guardian. For both of these reasons, some time to assist with meal preparation is warranted insofar as Appellant is not a minor and is taking some food orally; therefore, some time for meal preparation is warranted.

MassHealth persuasively explained why the requested 85 minutes per day was excessive given that the customary maximum for meal preparation for three full meals is 90 minutes per day. Despite this, Appellant still maintained that 85 minutes was needed even though the task only involves cooking and pureeing a very limited amount of food. Appellant has not justified the requested 85 minutes. Given that MassHealth approved 10 minutes per incident of oral feeding, the same time would be reasonable for its preparation. MassHealth is to approve 10 minutes for breakfast, 10 minutes for lunch and 10 minutes for dinner as well as 5 minutes for snacks for a total of 35 minutes per day for assistance with meal preparation.

Equipment Maintenance

In explaining the scope and nature of the task, MassHealth was persuasive in justifying why the requested 112 minutes per week to assist with a simple wipe down of Appellant's equipment is excessive. Appellant's mother noted that one of Appellant's PCA's had Covid, but this is only a temporary condition and cannot justify an amount of time granted over the course of an entire year. Even given general Covid concerns, additional wipe downs would only involve the portion of the equipment that Appellant actually touches. Five full minutes per day for simple wipe downs of portions of the equipment that was used on any given day is reasonable.

For the foregoing reasons, the appeal is approved in part and denied in part.

Order for MassHealth

- Increase time for assistance with oral feedings to 10 minutes at the frequency requested.
- Increase time for assistance with Meal preparation to 35 minutes per day.
- Increase time for assistance with shopping to 45 minutes agreed to at hearing.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

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