

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part	Appeal Number:	2179789
Decision Date:	2/17/2022	Hearing Date:	01/28/2022
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:


Via telephone:

Mary-Jo Elliott, 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:	Prior Authorization – PCA
Decision Date:	2/17/2022	Hearing Date:	01/28/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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 November 19, 2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on December 29, 2021 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for PCA services.

Issue

The appeal issue is whether MassHealth was correct 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 was represented at hearing via telephone by his father who is his legal guardian.

The MassHealth representative testified that the documentation submitted shows that the appellant is ■-years-old with a primary diagnosis of autism spectrum disorder. Relevant medical history shows that the appellant has pica, developmental delays, tuberous sclerosis, polycystic kidney disease, and seizure disorder (the last one was noted September 15, 2019). The appellant lives at home with his father.

The appellant's personal care management (PCM) agency submitted a prior authorization request for PCA services on November 12, 2021 requesting 19 hours and 0 minutes of day/evening hours per week and zero nighttime hours for the dates of service of November 30, 2021 through November 29, 2022. On November 19, 2021, MassHealth modified the request to 16 hours and 30 minutes of day/evening hours per week and zero nighttime hours. MassHealth made one modification related to PCA assistance with the instrumental activity of daily living (IADL) of meal preparation.

Meal Preparation

The appellant requested 20 minutes, 1 time per day, 5 days per week for breakfast and 30 minutes, 1 time per day, 5 days per week for lunch. MassHealth approved the time requested for breakfast and denied the time requested for lunch.

The MassHealth representative explained that the comments in the prior authorization state that the guardian works and the PCA makes a hot breakfast and prepares lunch for the appellant to take to his program Monday through Friday. She testified that when the legal guardian lives with the consumer, the legal guardian is expected to help with IADLs; however, since the appellant's father is at work and out of the house in the morning, MassHealth approved time for breakfast. She explained that lunch could be prepared at another time when the guardian is home.

The appellant's father testified that the appellant is 5'9", but very developmentally delayed, like a 2-year-old. He needs constant 24-hour care. His family provides a lot of care in all areas of his life, all of the time. He has had 19 hours of PCA assistance approved for many years and nothing has changed. While he brings a sandwich and drink to school for lunch, packing his lunch for his program consists of a lot more. He explained that the school works on behavioral modifications and uses food as motivation for the appellant. So, every day they have to pack twelve different motivators which include items such as jerky cut into small pieces, carrots sliced up small, chips broken up, and candy. It takes at least 30 minutes to prepare and the appellant's father is doing other tasks to care for the appellant when he is home after work. The PCA comes in the morning and showers the appellant and prepares breakfast, lunch, and the motivators.

The MassHealth representative responded that the regulation is clear for IADLs and family members or guardians living with the consumer are expected to help with them. She looked back to see what was approved for meal preparation in past prior authorizations, but the PCM agency had used the “no change” form which simply requested 19 hours and did not break the request down by task. Those request forms are no longer allowed by MassHealth.

The appellant’s father explained that his wife left him around Christmas. Prior to that, he was unable to do the lunch and motivators and now that it is just him, he has even less time to do it. He leaves the house for work at 7:00AM and is home a little after 5:00PM. He explained that the appellant is extremely delayed, cannot help with any of his own care, and cannot follow even small commands that his 3-year-old granddaughter could.

The MassHealth representative testified that 30 minutes is a lot of time to prepare lunch, even with the motivators. But she was willing to approve 20 minutes, 1 time per day, 5 days per week for lunch given the circumstances. She also noted that the prior authorization did not request any time for eating. In fact, it stated that the appellant was independent for the activity of daily living (ADL) of eating, which sounds incorrect based on testimony. She explained that at hearing she could not approve additional time for ADLs or IADLs that was not requested, but the appellant could request an adjustment through his PCM agency.

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 with a primary diagnosis of autism spectrum disorder who lives at home with his legal guardian and father (Testimony and Exhibit 4).
2. Relevant medical history shows that the appellant has pica, developmental delays, tuberous sclerosis, polycystic kidney disease, and seizure disorder (Testimony and Exhibit 4).
3. MassHealth received a prior authorization request on behalf of the appellant on November 12, 2021 requesting 19 hours and 0 minutes of day/evening hours per week and zero nighttime hours for the dates of service of November 30, 2021 through November 29, 2022 (Testimony and Exhibit 4).
4. On November 19, 2021, MassHealth modified the request to 16 hours and 30 minutes of day/evening hours per week and zero nighttime hours (Testimony and Exhibits 1 and 4).
5. The appellant timely appealed the notice on December 29, 2021 (Testimony and Exhibit 2).
6. MassHealth made one modification related to PCA assistance with the IADL of meal preparation (Testimony and Exhibit 4).

7. The appellant requested 20 minutes, 1 time per day, 5 days per week for breakfast and 30 minutes, 1 time per day, 5 days per week for lunch (Testimony and Exhibit 4).
8. MassHealth approved the time requested for breakfast but denied the time requested for lunch (Testimony and Exhibit 4).
9. The appellant's father works and is out of the house from 7:00AM to just after 5:00PM. The PCA makes the appellant a hot breakfast in the morning (Testimony and Exhibit 4).
10. Packing lunch five days a week for the appellant to bring to his program includes the actual lunch of a sandwich and drink in addition to twelve different motivators. Those motivators include items such as jerky cut into small pieces, carrots sliced up small, chips broken up, and candy. (Testimony).
11. At hearing, MassHealth offered to approve 20 minutes, 1 time per day, 5 days per week (Testimony).

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).

The requested services must also be medically necessary for the prior authorization 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

(Emphasis added).

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).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130

CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

The appellant's request for PCA assistance with lunch meal preparation is approved in part and denied in part. The appellant should be approved 20 minutes, 1 time per day, 5 days per week for lunch meal preparation, as offered at hearing by MassHealth. Any additional time requested is denied. MassHealth took into consideration the appellant's guardian's work schedule and the time it takes to prepare the motivators in addition to the appellant's actual lunch; however, when someone is living with a family member or legally responsible relative, the regulation requires family members to provide assistance with most IADLs, including meal preparation (130 CMR 422.410(C)). The appellant lives with his father who is his legal guardian and meal preparation is his responsibility.¹

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

Order for MassHealth

Approve 20 minutes, 1 time per day, 5 days per week for lunch meal preparation.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

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

¹ As mentioned at hearing, the appellant can request an adjustment through his PCM agency for eating or any other ADL or IADL that was not modified or not requested.