

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2207302
Decision Date:	12/20/2022	Hearing Date:	11/03/2022
Hearing Officer:	Scott Bernard		

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN *via* telephone

Interpreter:

Spanish



*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:	Personal Care Attendant (PCA) Prior Authorization (PA)
Decision Date:	12/20/2022	Hearing Date:	11/03/2022
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South	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

Through a notice dated September 13, 2022, MassHealth notified the appellant that it had modified the time she requested for PCA services and approved fewer hours than requested. (See 130 CMR 422.410(C)(1),(2); 450.204(A) and Exhibit (Ex.) 1). The appellant filed this appeal in a timely manner on or around September 26, 2022. (See 130 CMR 610.015(B) and Ex. 2). Modifications to a request for PCA services is valid grounds for appeal. (See 130 CMR 610.032).

Action Taken by MassHealth

MassHealth made modifications to the time the appellant requested for PCA services and approved fewer hours.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.000 and 450.204, in determining that the request should be modified.

Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, testified to the following. The appellant is an individual under the age of 65 with a primary diagnosis of intellectual disabilities. (Ex. 5, p. 8). The personal care management (PCM) agency noted that, in addition to

intellectual disability, the appellant's relevant prior medical history included seizure disorder (the last seizure occurring one week before the PCM agency's assessment in August), dual incontinence, and migraines, which had increased in frequency. (Ex. 5, p. 8). The PCM agency also wrote that the appellant no longer attends a day program and no longer has case management through the Department of Developmental Services (DDS). (Ex. 5, p. 8). The PCM agency wrote that the appellant lives with her mother, who is her legal guardian/surrogate and that the appellant's mother is also a PCA consumer. (Ex. 5, p. 9).

The PCM agency submitted a PA for a reevaluation of PCA services in August 2022. (Ex. 5, pp. 7-35). In the PA, the PCM agency requested 32:45 hours of day and evening PCA services per week for one year. (Ex. 1; Ex. 5, pp. 6, 28, 31, 33). MassHealth modified this to 27:00 hours of day and evening PCA services from October 1, 2022 through September 30, 2023. (Ex. 1; Ex. 5, pp. 6, 28).

The MassHealth representative stated that MassHealth made one modification, to the time requested for meal preparation, which is an instrumental activity of daily living (IADL). The PCM agency requested 90 minutes per day¹ for meal preparation. (Ex. 5, p. 22). The PCM agency commented that the appellant was dependent for all meal preparation and clean up due to cognitive impairment, resistant behavior, self-care deficit, and inability to sequence or follow commands. (Ex. 5, p. 23). The PCM agency also commented that the appellant's legal guardian was unable to perform these tasks due to her own decreased functional ability. (Ex. 5, p. 23). MassHealth modified this to 40 minutes per day. (Ex. 1; Ex. 5, pp. 6, 23). The MassHealth representative stated that under MassHealth PCA regulations, because the appellant lives with another PCA consumer, IADLs must be calculated on a shared basis. (Ex. 5, pp. 5, 37). The MassHealth representative stated that the other consumer in the household receives 420 minutes per week (60 minutes per day) for meal preparation. (Ex. 5, p. 30).

The MassHealth representative stated that the typical time for meal preparation is a maximum of 90 minutes per day. The MassHealth representative stated the reviewer determined that the time it would take for a PCA to assist with meal preparation in this case would be somewhat greater and increased the total for the household up to 100 minutes per day, or 700 minutes per week. She then subtracted the appellant's mother's 420 minutes per week from 700 to reach the appellant's 280 minutes per week. This was how MassHealth determined the shared time in the household, and why the appellant's time was modified from its original amount.

The appellant's mother, who represented her at the hearing, stated that she and her daughter did not eat the same types of food. The appellant's mother stated that she likes rice, beans, and vegetables and that the appellant does not and eats other food. The appellant's mother stated that she and her daughter also do not share mealtimes. The appellant's mother stated that she and the appellant eat different foods because of different tastes but not for medical reasons. The appellant's mother stated that the appellant's health condition is getting worse. She has had more seizures. The appellant needs more PCA time.

¹ The PCM agency actually requested 15 minutes for breakfast, 30 minutes for lunch, and 45 minutes for dinner per day, but since MassHealth determined meal preparation on a combined daily basis, the times have been combined here for ease of comparison.

Findings of Fact

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

1. The appellant is an individual under the age of 65 with a primary diagnosis of intellectual disabilities. (Ex. 5, p. 8).
2. The appellant's relevant prior medical history also includes seizure disorder (the last seizure occurring one week before the PCM agency's assessment in August), dual incontinence, and migraines, which had increased in frequency. (Ex. 5, p. 8).
3. The appellant no longer attends a day program and no longer has case management through DDS. (Ex. 5, p. 8).
4. The appellant lives with her mother, who is her legal guardian/surrogate and is also a PCA consumer. (Ex. 5, p. 9).
5. The PCM agency submitted a PA for a reevaluation of PCA services in August 2022. (Ex. 5, pp. 7-35).
6. The PCM agency requested 32:45 hours of day and evening PCA services per week for one year. (Ex. 1; Ex. 5, pp. 6, 28, 31, 33).
7. MassHealth modified this to 27:00 hours of day and evening PCA services from October 1, 2022 through September 30, 2023. (Ex. 1; Ex. 5, pp. 6, 28).
8. The PCM agency requested 90 minutes per day for meal preparation. (Ex. 5, p. 22).
9. MassHealth modified this to 40 minutes per day. (Ex. 1; Ex. 5, pp. 6, 23).
10. Because the appellant lives with another PCA consumer, IADLs must be calculated on a shared basis. (Testimony of the MassHealth representative; Ex. 5, pp. 5, 37).
11. The appellant's mother, the other consumer in the household, receives 420 minutes per week (60 minutes per day) for meal preparation. (Ex. 5, p. 30; Testimony of the MassHealth representative).
12. Generally the time for meal preparation maxes out at 90 minutes per day but the MassHealth reviewer determined that the time it would take for a PCA to assist with meal preparation in this case would be somewhat greater and increased the total for the household up to 100 minutes per day, or 700 minutes per week. (Testimony of the MassHealth representative).
13. MassHealth subtracted the appellant's mother's 420 minutes per week from 700 in order to reach the appellant's 280 minutes per week. (Testimony of the MassHealth representative).
14. The appellant and her mother eat different foods and eat at different times but not for medical reasons. (Testimony of the appellant's mother).

Analysis and Conclusions of Law

The provider must request prior authorization reevaluation from the MassHealth agency as a prerequisite to continued payment for ongoing PCA services. (130 CMR 422.416). Reevaluations must be conducted at least annually, accurately represent the member's need for physical assistance with activities of daily living (ADLs) and IADLs and consider the member's physical and cognitive conditions and resulting functional limitations to determine ability to benefit from PCA services. (130 CMR 422.422(D)).

MassHealth covers activity time performed by a PCA in aiding with the ADLs and IADLs specified in the reevaluation, and as authorized by MassHealth. (130 CMR 422.411(A)). IADLs are those specific activities that are instrumental to the care of the member's health and are performed by a PCA, such as meal preparation and clean-up, housekeeping, laundry, shopping, maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services. (130 CMR 422.402; 422.410(B)). In determining the number of hours of physical assistance that a member requires the PCM agency must assume that when a member is living with one or more other members who are authorized for MassHealth PCA services, PCA time for homemaking tasks (such as meal preparation and clean-up) must be calculated on a shared basis. (130 CMR 422.410(C)(2)). At the same time, MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs. (130 CMR 422.410(C)(3)).

At the same time, the purpose of the prior authorization process is to determine the medical necessity of requested services. (130 CMR 422.416). A service is 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; and 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 MassHealth. (130 CMR 450.204(A)).

The appellant has not demonstrated that there is a medical need for the number of hours that she has requested for meal preparation and clean up. There was very little in the way of explanation in the information the PCM agency submitted that would justify more than 40 minutes per day. Additionally, the appellant's mother testified that, although the appellant and she (as the other PCA consumer in the household) did not eat the same food and did not always share mealtimes, such differences were due to their different tastes and schedules. The appellant's mother confirmed that the differences were not for medical reasons.

For the above stated reasons, the 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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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