

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; denied in part	Appeal Number:	2207605
Decision Date:	12/13/2022	Hearing Date:	11/18/2022
Hearing Officer:	Cynthia Kopka		

Appearance for Appellant:



Appearance for MassHealth:

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:	PCA services
Decision Date:	12/13/2022	Hearing Date:	11/18/2022
MassHealth's Rep.:	Mary Jo Elliott	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy (remote)	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

By notice dated September 23, 2022, MassHealth modified Appellant's request for prior authorization of personal care attendant (PCA) services. Exhibit 1. Appellant filed this timely appeal on October 7, 2022. 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.

Action Taken by MassHealth

MassHealth modified 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 in his fifties with a primary diagnosis of spinal stenosis. Exhibit 4 at 11. Appellant had two prior back surgeries and bilateral hip replacement with complications leading to infection of the right hip. *Id.* Appellant has weakness in his extremities and spasms in his back and

lower body with prolonged standing or sitting. *Id.*

Boston Council for Independent Living (BCIL), Appellant's Personal Care Management Agency (PCMA), submitted an initial evaluation for PCA services, requesting 18.75 day/evening hours per week of PCA services on Appellant's behalf. On September 23, 2022, MassHealth modified Appellant's request and approved 13.0 day/evening PCA hours per week. The dates of service were from September 23, 2022 through September 22, 2023. Exhibit 1.

MassHealth modified the requested PCA hours for two instrumental activities of daily living (IADLs): meal preparation and laundry. At hearing, MassHealth restored the time requested for laundry based on testimony provided, approving 60 minutes total.

In the area of meal preparation, Appellant requested 20 minutes for breakfast, 30 minutes for lunch, and 45 minutes for dinner, for a total of 95 minutes per day. *Id.* at 24. MassHealth approved a total of 50 minutes per day. MassHealth relied on the information provided in the Occupational Therapy (OT) functional status report, which lists Appellant as needing moderate assistance with meal preparation. *Id.* at 8. MassHealth also noted that Appellant is independent in some activities of daily living (ADLs) including mobility and some transfers. *Id.* at 7-8. The PCMA nurse evaluator wrote that for the task of meal preparation, "PCA to prepare and clean up after all meals. Consumer with low standing tolerance, low balance. Pain in back and right hip, spasms in legs when standing for prolonged periods." MassHealth concluded that Appellant is able to participate in some of the meal preparation task from a seated position. MassHealth also noted that 95 minutes per day is beyond what is the standard of care for a person with complete dependence in meal preparation, and even beyond what is normally approved for someone with additional meal preparation needs, such as someone on a liquid diet. The MassHealth representative noted that the time approved does not include passive time that food is cooking on the stove or in the oven, but rather the active time it takes to prepare the food and clean up after the meal.

Appellant and his representative appeared by phone and testified as follows. Appellant can participate a little with meal preparation, but cannot stand very long due to muscle spasms. Appellant has to sit and roll around in a chair to help prepare meals. However, sitting and preparing food also causes problems. Appellant is trying to eat healthfully and is particularly careful about health due to Covid-19. As such, he eats only fresh vegetables that must be soaked and cleaned with baking powder before consuming. Appellant initially estimated that it takes his PCA about two hours a day to prepare his meals. For breakfast, Appellant testified that he eats grits, boiled eggs, and toast. For lunch, Appellant eats a fresh salad with cucumbers, tomatoes, and onions. For dinner, Appellant will eat baked fish and vegetables with a side salad.

MassHealth representative testified that based on Appellant's testimony, she could offer 60 minutes per day for meal preparation. Appellant did not believe that sounded fair. Appellant asked for 90 minutes.

Findings of Fact

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

1. Appellant's PCMA submitted an initial evaluation for PCA services, requesting 18.75 day/evening hours per week.
2. On September 23, 2022, MassHealth approved 13.0 day/evening hours per week of PCA services for the period of September 23, 2022 through September 22, 2023. Exhibit 1.
3. Appellant filed a timely appeal on October 7, 2022. Exhibit 2.
4. Appellant is in his fifties with a primary diagnosis of spinal stenosis. Appellant had two prior back surgeries and bilateral hip replacement with complications leading to infection of the right hip. Appellant has weakness in his extremities and spasms in his back and lower body with prolonged standing or sitting. Exhibit 4 at 11.
5. For assistance with meal preparation, Appellant requested 95 minutes per day, seven days per week. *Id.* at 24.
6. MassHealth modified this request to 50 minutes per day, seven days per week. *Id.*
7. Appellant can perform some meal preparation tasks, but can only tolerate sitting or standing in short periods.
8. The MassHealth representative opined that based on Appellant's testimony, 60 minutes per day of assistance with meal preparation was medically necessary.

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.

Here, it is undisputed that Appellant qualifies for PCA services. The only issue in dispute are MassHealth's modification of time requested for meal preparation. MassHealth restored the time requested for laundry based on testimony provided, approving 60 minutes total.

Regarding meal preparation, this appeal is approved in part. MassHealth agreed at hearing that Appellant's testimony justified 60 minutes per day of meal preparation assistance. Appellant argued that he needs at least 90 minutes per day. The testimony offered by Appellant does not support the need for meal preparation assistance beyond 60 minutes. Broken down by meal, this gives Appellant's PCA approximately 10 minutes to prepare grits, toast, and a boiled egg; approximately 20 minutes to thoroughly wash vegetables and chop them in a fresh salad; and approximately 30 minutes to prepare baked fish, vegetables, and salad. Given that Appellant is capable of performing some of the task, albeit standing or sitting in short periods, MassHealth's conclusion that 60 minutes is medically necessary is supported by the evidence presented at hearing. To the extent Appellant seeks meal preparation assistance beyond 60 minutes per day, this appeal is denied.

Order for MassHealth

Modify the laundry assistance from 30 minutes to 60 minutes as discussed at hearing. Modify meal preparation assistance from 50 minutes to 60 minutes. Recalculate the weekly hours of PCA assistance with that modification for the dates of service of the prior authorization period.

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]

General Counsel's Office –Sharon Boyle