

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Denied in part

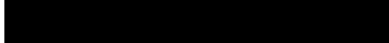
Appeal Number: 2209276

Decision Date: 3/24/2023

Hearing Date: 03/22/2023

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN, 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; Denied in part	Issue:	Prior Authorization for Personal Care Attendant Services
Decision Date:	3/24/2023	Hearing Date:	03/22/2023
MassHealth's Rep.:	Donna Burns, RN, Optum	Appellant's Rep.:	Guardian
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.

Jurisdiction¹

Through a notice dated 11/18/2022, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 32:30 day/evening hours per week to 20:15 day/evening hours per week plus 0 daily night time attendant hours for dates of service from 12/30/2022 to 12/29/2023 (130 CMR 422.410; Exhibit 1). A timely appeal was filed on the appellant's behalf by her permanent guardian² on 12/15/2022 and the appellant's benefits are protected at 26:45 day/evening hours of PCA services pending the outcome of this appeal (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

² See Exhibit 4.

The appeal was dismissed on 12/16/2022 pursuant to 130 CMR 610.035(7) by the Board of Hearings because there appeared to be no authority of the fair hearing requester to act on behalf of the appellant³; however, on 02/21/2023, the Board of Hearings reopened the appeal after receiving a copy of the guardianship documents showing the appellant's representative has authority to request a hearing on behalf of the appellant.

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for personal care attendant 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 personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request for PCA services was received on appellant's behalf on 10/28/2022 from her PCA provider, Independence Associates, Inc., and is a re-evaluation request for the dates of service of 12/30/2022 to 12/29/2023. In the prior authorization request for PCA services, the provider requested 32:30⁴ day/evening hours per week. Nighttime attendant hours were not requested.

The appellant is [REDACTED] years of age and she lives with her parents. The primary diagnoses affecting her ability to function independently are history of autism, mental retardation, ADHD, anxiety, panic attacks, muscle weakness, seizures, hypotonia, agoraphobia and behavioral outbursts. The appellant's mother reports that the appellant's health is stable (Exhibit 5).

³ See 130 CMR 610.004.

⁴ PCA time is referred to in this format, 32:30, to signify 32 hours and 30 minutes.

The Optum representative testified that MassHealth modified the PCA request to 20:15 day/evening hours per week. No nighttime attendant hours were requested or approved. MassHealth modified the request for PCA services in the Activity of Daily Living (ADL) task of grooming and in the Instrumental Activity of Daily Living (IADL) tasks of meal preparation and housekeeping (Exhibits 1 and 5).

Grooming (Oral Care)

The appellant's PCA provider requested 10 minutes, 3 times per day, 7 times per week (10 X 3 X 7)⁵ for PCA assistance with oral care. The provider noted that the PCA is necessary for all grooming task, mouth care, due to autism and behavioral outburst.

MassHealth modified the request for assistance with oral care to 5 X 2 X 7. The MassHealth representative testified that the time requested was excessive based on the appellant's documented needs.

The appellant's mother/guardian testified on behalf of the appellant. She stated that the appellant's father is her PCA. The mother first expressed concern about how the hours that have been provided in the past were reduced this year, even though the appellant's needs are greater and the parents are now older. Next, she addressed the appellant's need for assistance with oral care. She testified that the appellant needs assistance brushing her teeth and the time was requested because the appellant is "difficult to get her to brush." The PCA assists the appellant with brushing her teeth twice a day and it takes 5 minutes to complete the task. The mother assists the appellant to brush her teeth a third time every day.

The MassHealth representative responded that the time that the mother assists the appellant is not factored into the PCA time because the mother is not the PCA.

Meal Preparation and Clean Up

The appellant's provider requested 20 X 1 X 7 for assistance with meal preparation and clean up for daily breakfast, 30 X 1 X 7 for lunch, 45 X 1 X 7 for dinner and 5 X 1 X 7 for snacks. The provider noted that the appellant requires assistance due to autism, mental retardation, cognitive impairment, and behavioral outbursts. The PCA prepares, cooks, plates, cuts up food and cleans up after all meals/snacks. The appellant is "unsafe in the kitchen."

MassHealth modified the request for assistance with meal preparation and clean up to a total of 30 X 1 X 5. The MassHealth representative testified that because the appellant lives with legally responsible family members, her meal preparation and clean up time must be incorporated into the family's meals.

⁵ PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

The appellant's mother responded that the appellant "often wants her own food," and her food frequently needs to be prepared separately. She does not eat typical breakfast food. As a result, the separate food preparation takes about 5-10 minutes extra for breakfast and again for lunch. Clean up can be incorporated with the others' needs.

Housekeeping

The appellant's provider requested 70 minutes per week for assistance with housekeeping. The provider noted that PCA assistance is needed to clean the appellant's area of the home and following bathroom use.

MassHealth modified the request for PCA assistance with housekeeping to 30 minutes per week. The MassHealth representative testified that because the appellant lives with legally responsible family members, MassHealth presumes that the appellant's needs for housekeeping can be incorporated in the family's needs.

The appellant's mother responded that the appellant "is messy," and that the windows and walls need to be cleaned, as well as spots on the furniture. In addition to the family's housekeeping needs, the appellant's needs are an additional 30 minutes per week.

Findings of Fact

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 10/28/2022 from her PCA provider, Independence Associates, Inc., and is a re-evaluation request for the dates of service of 12/30/2022 to 12/29/2023 (Testimony; Exhibit 5).
2. In the prior authorization request for PCA services, the provider requested 32:30 day/evening hours of assistance per week. Nighttime attendant hours were not requested (Testimony; Exhibit 5).
3. The appellant is an adult who lives with her parents. The primary diagnoses affecting her ability to function independently are history of autism, mental retardation, ADHD, anxiety, panic attacks, muscle weakness, seizures, hypotonia, agoraphobia and behavioral outbursts. The appellant's mother reports that the appellant's health is stable (Testimony; Exhibit 5).
4. On 11/18/2022, MassHealth modified the PCA request to 20:15 day/evening hours per week. Nighttime attendant hours were not approved (Testimony; Exhibits 1 and 5).

5. A timely appeal was filed on the appellant's request on 12/15/2022 (Exhibit 2).
6. A fair hearing took place on 03/22/2023. The appellant's mother is her legal guardian who appeared as the appellant's appeal representative (Exhibits 2 and 3).
7. In the area of grooming (oral care), the appellant's PCA provider requested 10 minutes, three times per day, seven days per week (10 X 3 X 7)⁶. The provider noted that the PCA is necessary for all grooming tasks, mouth care, due to autism and behavioral outburst (Testimony; Exhibits 1 and 5).
8. MassHealth modified the request for assistance with oral care to 5 X 2 X 7 (Testimony; Exhibits 1 and 5).
9. The appellant's mother testified that the PCA assists the appellant with her oral care twice a day and that it takes five minutes each time for this assistance (Testimony).
10. In the area of assistance with meal preparation and clean up, the appellant's provider requested, the appellant's provider requested 20 X 1 X 7 for assistance with daily breakfast, 30 X 1 X 7 for lunch, 45 X 1 X 7 for dinner and 5 X 1 X 7 for snacks. The provider noted that the appellant requires assistance due to autism, mental retardation, cognitive impairment, and behavioral outbursts. The PCA prepares, cooks, plates, cuts up food and cleans up after all meals/snacks. The appellant is "unsafe in the kitchen" (Testimony; Exhibit 5).
11. MassHealth modified the request for assistance with meal preparation and clean up to 30 X 1 X 5 (Testimony; Exhibit 5).
12. The appellant lives with a legally responsible adult (Testimony; Exhibit 5).
13. The appellant's meal preparation and clean up take 20 minutes per day (10 minutes for breakfast, 10 minutes for lunch) in addition to the time incorporated with the family's needs due to the appellant's food preferences (Testimony).
14. In the area of housekeeping, the appellant's provider requested 70 minutes per week for assistance. The provider noted that PCA assistance is needed to clean the appellant's area of the home and following bathroom use (Testimony; Exhibit 5).
15. MassHealth modified the request for assistance with housekeeping to 30 minutes per week (Testimony; Exhibits 1 and 5).
16. The appellant's mother testified that the appellant's housekeeping needs can be

⁶ PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

mostly incorporated into the housekeeping needs of the family, except for an additional 30 minutes per week, because she is “messy,” and that the windows and walls need to be cleaned, as well as spots on the furniture (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) A service is "medically necessary" if:

(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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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/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 (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

- (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/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.

(Emphasis added.)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth made three modifications to the appellant's request for PCA services submitted on 10/28/2022 from her PCA provider, Independence Associates, Inc. The request is a re-evaluation for dates of service from 12/30/2022 to 12/29/2023. In the prior authorization request for PCA services, the provider requested 32:30 day/evening hours per week. The appellant is an adult woman who lives with her parents. The primary diagnoses affecting her ability to function independently are a history of autism, mental retardation, ADHD, anxiety, panic attacks, muscle weakness, seizures, hypotonia, agoraphobia and behavioral outbursts. The appellant's mother reports that the appellant's health is stable.

MassHealth modified the PCA request to 20:15 day/evening hours per week. Nighttime attendant hours were not requested and not approved. MassHealth modified the request for assistance in the ADL of grooming (oral care), and in the IADLs of meal preparation and clean up, and housekeeping.

Grooming (Oral Care)

The provider requested 10 X 3 X 7 for assistance with oral care. MassHealth modified the request to 5 X 2 X 7. Appellant's mother agreed that the appellant's PCA, her father, assists her with brushing her teeth twice a day and it takes five minutes each time. The mother's testimony supports MassHealth's modification. Accordingly, this portion of the appeal is denied.

Meal Preparation and Clean Up

In the area of assistance with meal preparation and clean up, the appellant's provider requested, the appellant's provider requested 20 X 1 X 7 for assistance with daily breakfast, 30 X 1 X 7 for lunch, 45 X 1 X 7 for dinner and 5 X 1 X 7 for snacks. The provider noted that the appellant requires assistance due to autism, mental retardation, cognitive impairment, and behavioral outbursts. The PCA prepares, cooks, plates, cuts up food and cleans up after all meals/snacks. The appellant is "unsafe in the kitchen."

The appellant lives with a legally responsible adult; specifically, her mother who is her legal guardian and her father. MassHealth modified the request for assistance with meal

preparation and clean up to 30 X 1 X 5. It was unclear why the time was restricted to five days per week; however, the time for the task was modified because the meal preparation and clean up needs of the appellant are expected to be incorporated with the family's needs.

Appellant's mother testified credibly that the appellant's meal preparation and clean up take 20 minutes per day (10 minutes for breakfast, 10 minutes for lunch) in addition to the time incorporated with the family's needs due to the appellant's food preferences.

Accordingly, PCA time will be approved in this area for 30 X 1 X 7 to accommodate the appellant's needs. This portion of the appeal is approved in part.

Housekeeping

In the area of housekeeping, the appellant's provider requested 70 minutes per week for assistance. The provider noted that PCA assistance is needed to clean the appellant's area of the home and following bathroom use. MassHealth modified the request for assistance with housekeeping to 30 minutes per week, again arguing that the appellant's IADL needs can be incorporated into the family's needs. The appellant's mother testified that the appellant's housekeeping needs can be mostly incorporated into the housekeeping needs of the family, except for an additional 30 minutes per week, because she is "messy," and that the windows and walls need to be cleaned, as well as spots on the furniture. Because the mother's testimony supports MassHealth's modification, this portion of the appeal is denied.

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

Order for MassHealth

Release aid pending. In the area of meal preparation and clean up, approve 30 X 1 X 7. Proceed with all other modifications.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]