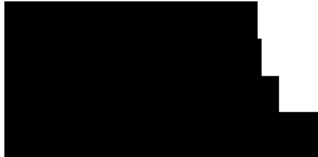


Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part, Denied in Part, Dismissed in Part	Appeal Number:	2209305
Decision Date:	5/1/2023	Hearing Date:	03/23/2023
Hearing Officer:	Alexis Demirjian		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N.



*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, Dismissed in Part	Issue:	Modification of PCA Hours
Decision Date:	5/1/2023	Hearing Date:	03/23/2023
MassHealth's Rep.:	Burns	Appellant's Rep.:	
Hearing Location:	Video Hearing	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 December 7, 2022, MassHealth modified the Appellant's requested PCA hours based on a medical necessity review. (see 130 CMR 450.303 and Exhibit 3). The Appellant, through her Guardian, filed this appeal in a timely manner on December 15, 2022.¹ (see 130 CMR 610.015(B) and Exhibit 1). Scope of services is valid grounds for appeal before the Board of Hearings. (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's requested PCA hours.

Issue

¹ The matter was originally scheduled for hearing on January 31, 2023, it was postponed at the request of Appellant's Counsel. It was rescheduled for March 1, 2023. The Appellant's counsel requested a postponement of the March 1st hearing date, and that request was granted. The postponements at the request of Appellant's Counsel have necessitated a new decision due date of July 17, 2023. (See Exhibit 2)

The appeal issue is whether MassHealth was correct in modifying the Appellant’s requested PCA services.

Summary of Evidence

The Appellant was represented in this matter by her counsel and the Appellant’s mother who is her legal guardian. The Appellant is a [REDACTED] who has been diagnosed with Mitochondrial Disease, Developmental Delays, Legal Blindness, Autism, Seizure Disorder and is non-verbal. The Appellant lives in a single-story home with her mother and stepfather. Affidavits filed in support of this appeal indicate that the Appellant’s mother and stepfather work outside the home 40 hours per week, however due to their nature of their jobs they are required to be on-call outside of business hours.

This appeal was filed to contest modifications made by MassHealth to the Appellant’s requested Personal Care Attendant (“PCA”) hours. The Appellant’s provider agency had requested 66 hours and 30 minutes per week and 2 hours per night.

After an evaluation, the Appellant was approved for 39 hours and 30 minutes per week and 2 hours per night. Holiday time was approved for 22 hours and 45 minutes. This Prior Authorization of PCA services were applicable for dates of service beginning 12/7/2022 and ending 12/6/2023.

MassHealth made modifications to the requested PCA services in the following areas: Mobility Stair Assist, Transfers, Bathing, Oral Care, Hair Care, Shaving, Dressing, Undressing, Bladder Care, Meal Prep, Housekeeping and Shopping.

The parties met in advance of the scheduled hearing and were able to come to an agreement on several areas of modification including Mobility, Bathing, Oral Care, Hair Care, Shaving, Dressing, Undressing, Housekeeping and Shopping.

The remaining areas of modification that are still contested by the Appellant are in the areas of Stair Assist, Transfers, Bladder Care and Meal Prep.

Each task prior authorization request is described fully below:

Stair Assist

The services requested included physical assistance on stairs. The time requested for that activity was 5 minutes, 2 episodes per day, 7 days a week, totaling the amount of PCA hours for this activity at 70 total minutes.

Task	Mins/Ep	Eps/Day	Days/Week	Total Mins/Week
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Stair Assist	5	2	7	70 minutes/week
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(See Exhibit 4, p. 15 and Testimony)

MassHealth modified PCA task for this time to 0 minutes, 0 episodes per day, 0 days per week. MassHealth testified that the reason for this reduction stems from the fact that a stair assist in the category of mobility relates solely to stairs within the home. The documentary evidence demonstrates that the Appellant lives in a single-story home.

The Appellant through her attorney argued that the Appellant needs assistance walking down steps outside her home to walk to transportation for her day program 5 days per week.

In response to this testimony, MassHealth was prepared to restore some of the requested PCA time for 5 minutes, 2 times per day, 5 days per week.

Appellant’s counsel rejected this resolution and argued that the Appellant should receive the requested services 7 days per week. She argued that the Appellant needs to go out for walks and that a PCA must walk her down the steps. Appellant’s counsel argued that it was a medical necessity for the Appellant to go on walks.

MassHealth cited to 130 CMR 422.412 and explained that the PCA program does not cover recreational services and taking the Appellant down the stairs and out for a walk would fall under recreational services and not be covered under the PCA program.

Transfers

Additionally, it was requested that the Appellant receive PCA time to assist in Transfers. The requested episodes, episodes per day and days per week for the task of transfers are listed in the table below:

Task	Mins/Ep	Eps/Day	Days/Week	Total Mins/Week
Transfers	7	8	7	392 minutes/week

The total minutes requested by the Appellant’s provider for Transfers tasks was 392 minutes per week for the above-described tasks. (See Exhibit 4, p. 16, 17 and Testimony)

MassHealth modified the request of Transfers to 2 minutes per episode, 5 episodes per day, 5 days per week and 2 minutes, 8 episodes per day, 2 days a week for the weekend. (Id.) MassHealth testified that time allotted for transfers is the hands-on time it takes to assist the Appellant from sitting to standing, standing to sitting, or assisting the Appellant from bed to standing. MassHealth testified that the time allotted is only for actual hands-on help, MassHealth does not include waiting

time or time spent cueing and individual on the task. MassHealth further testified that the amount of time per episode was reduced because 7 minutes was an excessive amount of time to physically assist an individual in the task of going from sitting to standing or getting them up from a prone position. Additionally, MassHealth reduced the number of episodes for the tasks during the week because the Appellant attends a day program from 9 am to 3 pm. MassHealth reduced the amount of time for task on the weekends, however it awarded the frequency of episodes that were requested.

The Appellant’s attorney argued that the time should be restored to 7 minutes per episode because the PCA monitors the Appellant’s stability and looks for signs of blood pressure instability when attempting a transfer. Additionally, in support of this appeal the Appellant’s PCAs filed affidavits in which they noted that they monitor the Appellant when transitioning her in these tasks.

In response, MassHealth noted that PCA’s should not be making assessments of the Appellant’s physical condition. PCA services are only to assist with hands on tasks, PCAs should not be monitoring the Appellant’s medical condition.

Bladder Care

For the activities of Bladder Care the Appellant’s provider requested the following:

Task	Mins/Ep	Eps/Day	Days/Week	Total Mins/Week
Bladder Care	12	8	7	672 minutes/week

MassHealth modified this request to account for the Appellant’s participation in her day program, which the Appellant attends from 9 am to 3 pm. Accordingly, MassHealth approved Bladder Care 12 minutes per episode, 5 episodes per day, 5 days per week. For weekend hours, when the Appellant does not attend her day program, MassHealth approved the requested 12 minutes per episode, 8 episodes per day, 5 days per week.

The Appellant’s mother testified that the Appellant experiences urinary retention and, in an effort, to avoid complications from this issue, she is taken to the bathroom every hour.² The Appellant’s mother testified that the Appellant returns from her day program at approximately 3:30 pm and goes to bed at 9:30 pm.

In response to this testimony, MassHealth offered to increase the frequency of Bladder Care during the week to 6 episodes rather than the modified 5 episodes. The Appellant’s counsel rejected this offer and asked for the hearing officer to determine whether the requested bladder care episodes should be restored.

² The Appellant’s mother submitted an affidavit in this matter and indicated that toileting occurs in intervals between 60 – 90 minutes.

Meal Preparation

For activities related to meal preparation the Appellant's provider requested the following:

Tasks	Mins/Ep	Days/Wk	Total Mins/Week
Breakfast	15	7	105
Lunch	20	7	140
Dinner	30	7	210
Snacks	5	7	35

The total minutes requested by the Appellant's provider for meal preparation tasks was 490 minutes per week. (See Exhibit 4, p. 24 and 25 and Testimony). The note submitted with the request states, "Consumer's meals must be prepared for her, and requires gluten and [casein] free diet. Both parents are not home to prepare meals."

MassHealth modified the prior authorization request for 45 minutes, 5 days per week for completion of meal preparation tasks by the PCA, totaling 225 minutes per week. (Id.).

The Appellant's mother testified that she works within the court system and is required to be on-call, her hours may be inconsistent and sometimes she is required to work on the weekends. She further testified, that even though the Appellant attends a day program during the week, PCAs prepare the Appellant's lunch because of the Appellant's special dietary requirements.

In response to this testimony, MassHealth noted it does not allocate PCA time based on anticipatory need.

In support of this appeal, the Appellant's mother and stepfather submitted affidavits. The Appellant's mother's affidavit includes the following:

On the weekends, PCAs assist us with caring for [REDACTED] from about 8AM to 3 PM so that we are able to run errands and complete other necessary tasks. Occasionally, PCAs assist us from 3 PM to 9 PM on weekends. This support is particularly needed if we have to transport [REDACTED] somewhere or if my husband has to attend a work-related event.

(See Exhibit 5, p. 70)

The Appellant's stepfather's affidavit contained the following:

On the weekends, PCAs assist us with Alexandra's care from about 8 AM to 3 PM so that we can run errands and complete other tasks. PCAs also assist us on weekend nights, especially if we have to transport [REDACTED] somewhere.

(See Exhibit 5, p. 82)

The affidavits provided do not address why the Appellant's mother or stepfather would be unable to prepare the Appellant's meals ahead of time on the weekdays or on the weekends. They also indicate that the PCAs are being used for services outside the PCA program which is inconsistent with the regulations.

In addition to affidavits submitted by the Appellant's mother and stepfather, affidavits were submitted by the PCAs, these affidavits were reviewed and did not directly address the specific modifications that were made by MassHealth.

Letters from the Appellant's medical providers were also submitted in support of this appeal. The letters only addressed the cumulative amount of PCA hours and do not address the individual modifications or provide documentary evidence as to why each individual modification should be restored.

Findings of Fact

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

1. The Appellant is a [REDACTED] who has been diagnosed with Mitochondrial Disease, Developmental Delays, Legal Blindness, Autism, Seizure Disorder and is non-verbal.
2. The Appellant lives in a single-story home with her mother and stepfather. (Testimony; Exhibit 4 and Exhibit 5)
3. The Appellant's mother and stepfather work full-time outside the home. (Testimony; Exhibit 4 and Exhibit 5)
4. The Appellant attends a day program outside the home from 9 am to 3 pm, approximately 6 hours per day, 5 days per week. (Testimony; Exhibit 5)
5. The Appellant's provider agency requested 66 hours and 30 minutes per week and 2 hours per night. (Testimony; Exhibit 4)
6. After an evaluation, MassHealth, modified the Appellant's provider's request and the Appellant was approved for 39 hours and 30 minutes per week and 2 hours per night. Holiday time was approved for 22 hours and 45 minutes. This Prior Authorization of PCA services were applicable for dates of service beginning 12/7/2022 and ending 12/6/2023. (Testimony; Exhibit 4)
7. MassHealth made modifications to the requested PCA services in the following areas: Mobility, Stair Assist, Transfers, Bathing, Oral Care, Hair Care, Shaving, Dressing, Undressing, Bladder Care, Meal Prep, Housekeeping and Shopping. (Testimony; Exhibit 4)

8. The parties were able to resolve the following areas of dispute: Mobility, Bathing, Oral Care, Hair Care, Shaving, Dressing, Undressing, Housekeeping and Shopping. (Testimony)
9. The Appellant's provider requested PCA hours for the task of stair assist, in the amount of 5 minutes per episode, 2 episodes per day, 7 days per week. Totaling 70 minutes of PCA task for this task per week. (Testimony; Exhibit 4)
10. MassHealth modified this request to 0 minutes per episode, 0 episodes per day, 0 days per week because the Appellant lives in a single-story home and the only stairs are from the front door to outside the home. (Testimony; Exhibit 4).
11. The Appellant's provider requested PCA hours for the task of transfers, in the amount of 7 minutes per episode, 8 episodes per day, 7 days per week. (Testimony; Exhibit 4)
11. MassHealth modified the request for PCA time for the task of transfers to 2 minutes per episode, 5 episodes per day, 5 days per week and 2 minutes per episode, 8 episodes per day, 2 days a week for the weekend. (Testimony; Exhibit 4)
12. MassHealth modified the time per episode for this task because PCA time is solely awarded for hands-on assistance with a task and the transfer task is related only to helping someone move from a seated position to standing or vice versa. Time is not allotted for cueing, prompting, or waiting for the Appellant to complete the task. (Testimony).
13. MassHealth modified the frequency of episodes of the task of transfers from 8 times per day to 5 times per day during the week because the Appellant attends a day program from 9 am to 3 pm. (Testimony; Exhibit 4 and Exhibit 5).
14. The Appellant's provider requested PCA time for the task of Bladder Care, in the amount of 12 minutes per episode, 8 episodes per day, 7 days per week. (Testimony; Exhibit 4)
15. MassHealth modified the provider's request for the PCA time for the task of Bladder Care to 12 minutes per episode, 5 episodes per day, 5 days per week during the week when the Appellant attends her day program from 9 am to 3 pm. (Testimony; Exhibit 4 and Exhibit 5).
16. MassHealth approved the requested time for Bladder Care on the weekends at 12 minutes per episode, 8 times per day, 2 days per week. (Testimony; Exhibit 4 and Exhibit 5).
17. The Appellant has a special diet requiring gluten and dairy free meals. (Testimony)
18. The Appellant's provider requested PCA time for the task of Meal Preparation for breakfast in the amount of 15 minutes per episode, 7 days per week, for a total of 105 minutes per week. (Testimony; Exhibit 4)
19. The Appellant's provider requested PCA time for the task of Meal Preparation for lunch in the amount of 20 minutes per episode, 7 days per week, for a total of 140 minutes per week.

(Testimony; Exhibit 4)

20. The Appellant's provider requested PCA time for the task of Meal Preparation for dinner in the amount of 30 minutes per episode, 7 days per week, for a total of 210 minutes per week. (Testimony; Exhibit 4)

21. The Appellant's provider requested PCA time for the task of Meal Preparation for snack in the amount 5 minutes per episode, 7 days per week, for a total of 35 minutes per week. (Testimony; Exhibit 4)

22. MassHealth modified the provider's request to 45 minutes daily for Meal Preparation, 5 times per week because the Appellant attends a day program from the hours of 9 am to 3 pm and the Appellant lives with family members who are expected to help with activities such as meal preparation.

Analysis and Conclusions of Law

Pursuant to 130 CMR 403 (C), MassHealth covers personal care services provided to eligible MassHealth members who can be appropriately cared for in the home when all the following conditions are met:

- (1) The PCA services are authorized for the member in accordance with 130 CMR 422.416.
- (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 PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

Personal Care Attendants ("PCAs") must provide services in accordance with 130 CMR 422.000 and the scope of services described under 130 CMR 422.419 (C) and the service agreement established pursuant to 130 CMR 422.423.

130 CMR 422.419 (C) describes the scope of services a PCA may provide:

The PCA must provide PCA services pursuant to 130 CMR 422.000 and in accordance with the following:

- (1) Provide assistance with ADLs and IADLs as described in 130 CMR 422.410 and the service agreement established pursuant to 130 CMR 422.423;
- (2) Not provide any non-covered services as described in 130 CMR 422.412 as part of the PCA program;**

(Bold emphasis added.)

MassHealth regulations define Activities of Daily Living (ADL's) under 130 CMR 422.410(A),

and 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.

MassHealth defines Instrumental Activities of Daily Living (IADL) under 130 CMR 422.410(B). They are defined as follows:

- (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 PCA services; and
 - (c) other special needs approved by the MassHealth agency as being instrumental to the health care of the member.

Pursuant to 130 CMR 422.410 (C), in determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the PCM 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 PCA 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.

(Bold emphasis added.)

The requested services must 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. MassHealth regulation, 130 CMR 450.204 provides that 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: Potential Sources of Health Care, or 517.007: Utilization of Potential Benefits.

Further, pursuant to 130 CMR 450.204 (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 MassHealth agency upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.

Pursuant to 130 CMR 422.412, 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, or a resident of a provider-operated residential facility subject to state licensure, such as a group home;
- (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;**
- (G) surrogates, as defined in 130 CMR 422.402; or
- (H) PCA services provided to a member without the use of EVV as required by the MassHealth agency. 422.413: Payment for PCA Services.

(Bold emphasis added.)

In order to evaluate whether MassHealth erred in its modifications of the Appellant's requested PCA time, it is necessary to review each modified task and determine whether the facts and regulations support a restoration of the requested time. MassHealth, through the PCA program, only pays for time spent doing hands-on tasks or assistance, the time spent cuing, prompting, supervising, guiding, or coaching an Appellant through a time is not included within PCA services paid for by MassHealth.

Further, MassHealth does not pay for social services, including babysitting or recreational services. Additionally, there is an expectation that family members living with the Appellant will provide services such as meal preparation, housekeeping and laundry and those services should not be duplicated by the PCA or compensated by MassHealth.

At the hearing, the parties were able to resolve the dispute related to PCA assistance with mobility, bathing, oral care, hair care, shaving, dressing, undressing, housekeeping, and shopping. Accordingly, the appeal with regard to the above-listed PCA tasks is DISMISSED.

The four remaining issues in dispute were modifications related to stair assist, transfers, bladder care, and meal preparation.

Stair Assist

The testimony offered in support of the Appellant's position that additional time should be given for the task of stair assist involved two different activities. Appellant's counsel agreed that the Appellant lives in a single-story home but argued that the Appellant should have PCA assistance to walk the down the front steps for transportation to the Appellant's day program and upon her return home from the program. This argument is persuasive, and the task does not fall outside of prohibitions within the PCA regulations.

The second argument raised in support of PCA assistance with stair assists on weekends, centered around walks taken outside the home. Appellant's counsel argued that walks are medically necessary, thus MassHealth should cover the PCA walking the Appellant down the stairs and out for walks on the weekend. This argument is less persuasive, the regulations clearly state that the MassHealth does not pay for 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. See 130 CMR 422.412 (A). The record does not support the Appellant's assertion that stair assists to take walks should be covered, walks are considered a recreational activity and fall outside the scope of the PCA program.

Based on the testimony and written evidence, MassHealth erred in modifying stair assist to 0 minutes per episode, 0 times per day, 0 times per week. However, the record only supports restoring stair assist to 5 minutes per episode, 2 episodes per day, 5 days per week. Accordingly,

the appeal's request for restoration of stair assist is partially APPROVED.

Transfers

The Appellant's provider requested 7 minutes, 8 episodes per day, 7 days of week for transfers. MassHealth modified this request to 2 minutes, 5 episodes per day, 5 days per week for transfers during the week, and 2 minutes, 8 episodes per day, 2 days per week for transfers during the weekend. MassHealth's modification included a reduction in time per episode and episodes during the week when the Appellant attends a day program.

The testimony offered by the Appellant's representatives regarding the request for additional time for the task of transfers was related to the time the PCA spent cueing and coaching the Appellant to move from a seated position to standing. MassHealth testified the time allocated for transfers is based solely on the hands-on time that a PCA must physically assist the appellant from moving from a seated to position to standing. Pursuant to 130 CMR 422.412(C), MassHealth does not cover time for cueing, coaching, and/or supervision. For this reason, the Appellant has not shown that any enlargement of time with transfers is appropriate.

Additionally, the Appellant's representatives did not offer any rationale for why the frequency of episodes should occur more during the week when the Appellant is attending a day program and not in the home for six hours per day.

Accordingly, the Appellant's request for restoration of PCA time for transfers is DENIED.

Bladder Care

The time requested for bladder care was 12 minutes per episode, 8 episodes per day, 7 days per week. For weekend hours, MassHealth approved bladder care for the requested time and frequency, thus the Appellant was approved for 12 minutes, 8 times per day, 2 days per week.

MassHealth modified the request for bladder care during the week, consistent with documentary evidence that the Appellant is not in the home for approximately 6 hours, Monday through Friday. Accordingly, MassHealth modified bladder care to 12 minutes episodes, 5 times per day, 5 days per week.

At hearing, the Appellant's representatives sought a restoration of the weekday bladder care frequency to 8 times per day, as requested and approved on the weekend. In support of their argument, the Appellant's mother testified that the Appellant experiences urinary retention, in attempt to manage this condition, they will take the Appellant to the bathroom every hour, thus even though the Appellant is out of the home for 6 hours, they will take her frequently to the bathroom upon her return from the day program.

The Appellant attends a day program from 9 am to 3 pm, Monday through Friday, approximately 6 hours, during that time she is taken to the bathroom by staff at the program. MassHealth's reduction in frequency of episodes to account for the time the Appellant is outside the home was

appropriate.

While the hearing officer can appreciate the challenges of managing the Appellant's multiple conditions, the need to restore the frequency to 8 episodes per day during the week is incongruent with the evidence that has been produced in this matter. Affidavits introduced vary the interval of time that the Appellant is taken to the bathroom from 60 to 90 minutes and if 8 episodes of day is sufficient when the Appellant is in the home for a full day, 8 episodes a day when the Appellant is out of the home attending her day program for 6 hours a day would be superfluous.

After hearing the testimony of the Appellant's mother at hearing, MassHealth was willing to amend its modification to allow for 6 episodes of bladder care during the week. The hearing officer will honor this offer of restoration made by MassHealth during the hearing, as it accounts for the Appellant's mother's concerns about bladder retention and acknowledges that the Appellant is outside the home for 6 hours per day during the weekdays.

Accordingly, the Appellant's request for restoration of PCA time for bladder care is partially APPROVED.

Meal Preparation

The time requested for meal preparation, included a request for breakfast preparation at 15 minutes, 7 days per week, lunch preparation at 20 minutes, 7 days per week and dinner preparation at 30 minutes, 7 days per week, and snack preparation at 5 minutes, days per week. MassHealth reduced the requested time to a total of 45 minutes for meal preparation 5 days per week. As grounds for the reduction, MassHealth offered that the Appellant lives with her mother and stepfather and under 130 CMR 422.410(B), 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.

The Appellant's mother testified that she also suffers from the same medical condition as her daughter to a lesser extent and has had a worsening of symptoms that leaves her depleted, thus she struggles to assist with meal preparation for her daughter who requires a special diet that is gluten and dairy free. The Appellant's mother testified that she and her husband do not eat the same meals as the Appellant, and they are not home during the evening hours during the week to prepare the Appellant her meals. Further the Appellant's mother testified that the unpredictability of her work schedule can lead to her being unavailable during the weekend.

In support of this appeal, the Appellant's mother and stepfather submitted affidavits. The Appellant's mother's affidavit includes the following:

On the weekends, PCAs assist us with caring for [REDACTED] from about 8AM to 3 PM so that we are able to run errands and complete other necessary tasks. Occasionally, PCAs assist us from 3 PM to 9 PM on weekends. This support is particularly needed if we have to transport [REDACTED] somewhere or if my husband has to attend a work-related event.

(See Exhibit 5, p. 70)

The Appellant's stepfather's affidavit contained the following:

On the weekends, PCAs assist us with Alexandra's care from about 8 AM to 3 PM so that we can run errands and complete other tasks. PCAs also assist us on weekend nights, especially if we have to transport [REDACTED] somewhere.

(See Exhibit 5, p. 82)

The affidavits provided do not address why the Appellant's mother or stepfather would be unable to prepare the Appellant's meals on the weekends.

The affidavits are problematic as they seem to suggest that the Appellant's mother and stepfather are using PCA hours on the weekend to provide babysitting or supervision coverage for the Appellant so that they can run errands. The regulations explicitly state that PCA services cannot be used for **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**. See 130 CMR 422.412.

Even though the Appellant lives with family members, and those family members are expected to help with meal preparation for the Appellant, MassHealth approved 45 minutes of PCA assistance to help with preparation of the Appellant's meals 5 days per week. MassHealth's modification considers the special circumstances which account for the Appellant's mother and stepfather's work schedule and complies with 130 CMR 422.410(B), specifically, when a member is living with family members, the family members will provide assistance with **most** IADLs.

The evidence proffered in this case does not support a restoration of PCA assistance for mealtime preparation as requested by the Appellant's provider.

Accordingly, the Appellant's request for restoration of the mealtime is DENIED.

Order for MassHealth

MassHealth shall remove the aid pending and rescind the December 7, 2022 notice. MassHealth shall issue a new notice that reflects the agreements made between the parties with respect to Mobility, Bathing, Oral Care, Hair Care, Shaving, Dressing, Undressing, Housekeeping and Shopping. Additionally, the notice should include additional PCA time for the task of Stair Assist in the amount of 5 minutes per episode, 2 episodes per day, 5 days per week. It should also include PCA time for Bladder Care as follows: 12 minutes per episode, 6 episodes per day, 5 days per week for weekdays and 12 minutes per episode, 8 episodes per day, 2 days per week.

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.

Alexis Demirjian
Hearing Officer
Board of Hearings

cc:

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

