

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2302184
Decision Date:	5/8/2023	Hearing Date:	04/13/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:

Via telephone



Appearance for MassHealth:

Via telephone

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:	Denied	Issue:	Prior Authorization-PCA
Decision Date:	5/8/2023	Hearing Date:	04/13/2023
MassHealth's Rep.:	Donna Burns	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South 3 (Remote)	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 January 31, 2023, MassHealth modified the Appellant's prior authorization (PA) request for day/evening personal care attendant (PCA) services from the requested 51 hours and 0 minutes of day/evening hours per week to 48 hours and 45 minutes of day/evening hours of PCA assistance per week. (Exhibit 1).¹ The Appellant filed this appeal in a timely manner on February 8, 2023. (130 CMR 610.015(B); Exhibit 2). Modification of a request for prior authorization is valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the Appellant's PA request for PCA services.

Issue

The appeal issue is whether MassHealth was correct in modifying the Appellant's PA request for PCA services.

¹ The PCM agency also requested, and MassHealth authorized, 2 nighttime hours of PCA services for the Appellant every night.

Summary of Evidence

The Appellant was represented by her PCA surrogate (her son) and her PCA nurse, both of whom appeared at the hearing via telephone. MassHealth was represented by a Registered Nurse who appeared at the hearing telephonically and testified as follows: the Appellant is [REDACTED] years-old with a primary diagnosis of Osteoarthritis, Chronic Obstructive Pulmonary Disease (COPD), Osteoporosis and is legally blind. (Exhibit 6, p. 8). On January 20, 2023, the provider, Tri-Valley Inc., submitted a reevaluation request for 51 hours and 0 minutes per week for day/evening hours and 2 hours per night. (Exhibit 6). On January 31, 2023, MassHealth modified the request to 48 hours and 45 minutes per week for day/evening hours and agreed with the 2 hours per night. (Exhibit 1, p. 2; Exhibit 6, pp. 3-6).

The only modification was meal preparation. MassHealth modified meal preparation from the requested amount of 110 minutes daily, 7 days a week to 90 minutes daily, 7 days a week. The MassHealth representative testified that the requested amount of 110 minutes daily is longer than ordinarily required for meal preparation and made inquiry as to whether there was a typographical error made in the amount of time requested for snacks (30 minutes) because in general, the time requested is excessive. Additionally, the Appellant received 90 minutes per day for meal preparation last year. In response, the Appellant's representatives explained that the Appellant was hospitalized in 2021 which required rehabilitation for a few months upon her discharge. When the Appellant returned home, she had lost a great deal of weight and after trying several different measures without success, a fourth meal was added to the Appellant's diet. As a result, the Appellant was able to start gaining weight. Each meal is pureed because the Appellant has missing teeth which helps the Appellant eat more food and therefore helps her caloric intake per meal. The pureeing is performed by taking different foods such as vegetables for example, softening them by cooking them which is then followed by mashing. With respect to solid meats, the meats are purchased already shredded or the meat is chopped up individually followed by steaming, cooking and mashing. The Appellant needs to be coached and encouraged to eat and she also requires oral supplements which she does not have the ability to take on her own volition.

After hearing testimony, the MassHealth representative offered to increase the time to 100 minutes daily, 7 days a week. She explained that the requested amount of 110 minutes daily is excessive, given the possibility that some of the foods prepared could be used more than once during the day and mashing foods does not take too long. As for taking supplements, the MassHealth representative explained that medications are in a different category for which the Appellant was granted time. With respect to coaching and encouraging however, that is not part of the PCA program. The MassHealth representative testified that due to the Appellant's recently fractured humerus, an adjustment was submitted so the Appellant will be receiving additional time temporarily due to the fracture. This time is separate and apart from the issue of this appeal. As for the meal preparation time discussed in this appeal, the MassHealth representative stood at 100 minutes per day.

The Appellant's representatives expressed their appreciation for the services that were provided to the Appellant thus far. However, they disagreed with MassHealth for taking hours away from a [REDACTED]

year-old who just broke a bone and implored the MassHealth representative to have a heart. The Appellant's representative testified that he understands MassHealth has other clients, is trying to save money and has a budget but the Appellant is not the patient that should have hours taken away. The MassHealth representative clarified that hours were not taken away from the Appellant for meal preparation, the Appellant received 90 minutes per day last year and MassHealth is granting an additional 10 minutes per day this year. The Appellant's representatives testified that an additional 10 minutes may be the MassHealth representative's automated mode of thinking that the meal preparation process could be completed within, however, it is not a fair assessment. The meal preparation was documented fully in the evaluation that due to the Appellant's recent weight loss, four (4) meals are required per day. In order to prevent the Appellant from choking, all meals are steamed and pureed. The Appellant has a special, organic diet that is high in protein and carbohydrates to help her sustain and accrue weight gain. The MassHealth representative testified that some meals can be made to be served as 2 separate meals per day so it should not take that long. Additionally, the steaming and boiling of food is not part of the time that is counted for meal preparation. As for the specialized food purchased, that would be more of a shopping issue to make sure that the right foods are bought. The MassHealth representative pointed out that the Appellant did not request any time for feeding so if there is any food that the Appellant needs to be fed (not monitored but actually fed) then that is something for the Appellant's representatives to consider for next year.

Findings of Fact

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

1. The Appellant is ■ years-old with a primary diagnosis of Osteoarthritis, COPD, Osteoporosis and is legally blind. (Testimony; Exhibit 6, p. 8).
2. On January 20, 2023, the provider Tri-Valley Inc., submitted a reevaluation request for 51 hours and 0 minutes per week for day/evening hours of PCA assistance and 2 hours per night. (Testimony; Exhibit 6).
3. By notice dated January 31, 2023, MassHealth modified the requested time to 48 hours and 45 minutes per week for day/evening hours and 2 hours per night. (Testimony; Exhibit 1, p. 2; Exhibit 6, pp. 3-6).
4. Currently, the Appellant is in aid pending. (Exhibit 3).
5. MassHealth modified the time requested for meal preparation. (Testimony; Exhibit 6, p. 31).
6. The PCM agency requested 110 minutes per day, 7 days a week which was modified to 90 minutes per day, 7 days a week. (Testimony; Exhibit 1, p. 2; Exhibit 6, p. 3).
7. After hearing testimony, the MassHealth representative increased the time to 100 minutes per

day, 7 days a week for meal preparation. (Testimony).

8. The Appellant recently fractured her humerus. (Testimony).
9. Due to the Appellant's recent fracture, MassHealth received an adjustment so the Appellant will be receiving additional time, separate and apart from the issue on appeal. (Testimony).

Analysis and Conclusions of Law

PCA services requested must meet medical necessity criteria as defined at 130 CMR 450.204, below:

(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 of 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.

(B) Medically necessary services must be of quality that meets professionally recognized standards of 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. 1396(a)(30) and 42 CFR 440.230 and 440.260).

In addition to being medically necessary as defined above, time requested for PCA services must comport with the following guidelines at 130 CMR 422.410:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

- (1) mobility: physically assisting a member who has the 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 medication 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 PCA 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 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.

(130 CMR 422.410).

In the present case, MassHealth modified the Appellant's prior authorization request for meal preparation because the time requested to prepare meals was longer than ordinarily required. The MassHealth representative's testimony is persuasive and supported by documentary evidence. MassHealth's modification is justified and the Appellant, who has the burden, did not provide convincing evidence to support that it takes longer than 100 minutes per day for meal preparation. Indeed, the Appellant received 90 minutes last year for meal preparation and was granted an additional 10 minutes this year for a total of 700 minutes per week. Further, each meal that is prepared could be used more than once as a separate meal and unfortunately coaching and encouraging the Appellant to eat is not part of the time counted for the purposes of the PCA program. For these reasons, this appeal is denied.²

² This denial does not preclude the Appellant's representatives from requesting time for "Eating" if there are meals that the Appellant needs to be actually fed (not monitored), as suggested at the hearing.

Order for MassHealth

If MassHealth has not already done so, send notice to the Appellant authorizing her for 100 minutes per day, or 700 hours per week for meal preparation for the PA period February 28, 2023 through February 27, 2024. Remove aid pending.³

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

cc:

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

³ As stated above, the adjustment received by MassHealth due to the Appellant's recent fractured humerus is separate and apart from this appeal.