

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2303348
Decision Date:	6/20/2023	Hearing Date:	06/02/2023
Hearing Officer:	Casey Groff		

Appearance for Appellant:




Appearance for MassHealth:

Donna Burns, R.N., 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	Issue:	Personal Care Attendant Services
Decision Date:	6/20/2023	Hearing Date:	06/02/2023
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	
Hearing Location:	BOH (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 April 4, 2023, MassHealth informed Appellant, a MassHealth adult member, that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1); Exh. 1, pp. 1-6. On April 25, 2023, Appellant's mother submitted a timely appeal of the April 4th notice. See 130 CMR 610.015(B); Exhibit 1, p. 7. On April 26, 2023, the Board of Hearings (BOH) dismissed the appeal for failure to demonstrate proper authority to represent Appellant. See Exhibit 2; 130 CMR 610.015(G). On May 2, 2023, Appellant's mother sent documentation showing she was her son's court appointed permanent legal guardian. See Exh. 3. Accordingly, BOH vacated the dismissal and scheduled a hearing for June 2, 2023. See Exhibit 4. Modification of a request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's PA request for PCA services.

Issue

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

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his mother. Both parties appeared via telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is an adult MassHealth member over the age of 21. See Exh. 5. His primary diagnoses include spastic cerebral palsy (CP), developmental delay, and scoliosis. He is legally blind, non-verbal, and non-ambulatory. See id. at 10. He is completely dependent for all activities of daily living (ADLs). Appellant lives with his mother, who also serves as his court appointed legal guardian. See Exh. 3; see also id. at 10.

On [REDACTED] 2023, Appellant was evaluated by a registered nurse from his Personal Care Management (PCM) agency to determine his continued need for personal care attendant (PCA) services. See Exh. 5, p. 9. On March 21, 2023, Appellant's PCM agency sent MassHealth a prior authorization (PA) request. Based on observations from Appellant's evaluation, the PCM agency sought 4 hours and 45 minutes of day/evening PCA services per-week and two nighttime hours per-night (14 hours per week) for dates of service beginning May 10, 2023 through May 9, 2024. See id.

On April 4, 2023, MassHealth modified Appellant's PA request by approving 37 hours and 45 minutes of day/evening PCA services per-week. See Exh. 1. The two nighttime hours were approved as requested. MassHealth approved all requested ADL and IADL categories, except for the time requested for "meal preparation." Id.

Appellant's PCM agency requested a total of 70 minutes per-day for PCA assistance with meal preparation and clean-up, broken down as follows: breakfast: 15 minutes; lunch: 20 minutes; dinner: 30 minutes; and snacks: 5 minutes. See Exh. 5, p. 30. The PCM agency noted that Appellant is totally dependent for all meal preparation activities. Id. He does not receive any home delivered meals, nor does he attend programs where he is provided meals outside the home. Id. The evaluating nurse also commented that Appellant's mother provides and purees all his food; Appellant is totally dependent on the PCA for eating, which requires physically feeding Appellant, encouraging him to swallow, placing food and sippy cup to mouth; that he cannot sequence tasks, is legally blind, and cannot use utensils due to spastic CP. Id.

MassHealth did not approve any time for PCA assistance in the meal preparation category. See

id. at 30-31. The MassHealth representative explained that meal preparation is an instrumental activity of daily living (IADL). It is MassHealth's position that when a parent or legal guardian lives with the member, it is their responsibility to assist the member with IADLs, including meal preparation, housekeeping, and laundry. Because Appellant lives with his mother/legal guardian, she is expected to prepare his meals. Additionally, the evaluation reflected that the mother assumes this responsibility and does prepare meals. For these reasons, MassHealth did not approve any time for this IADL. The MassHealth representative further noted that MassHealth approved, the requested time for eating (a separate ADL category) at 15 minutes per-meal, per-day. See id. at 21.

Appellant's mother/legal guardian appeared at the hearing and testified that she has performed the bulk of food preparation tasks; however, it is an involved process it requires the assistance of two people; specifically, herself and the PCA. Appellant's mother reiterated the complexity of her son's medical needs, including the fact that he is blind, nonverbal, and non-ambulatory. He is unable to participate in food preparation or cleaning. He cannot chew food. As a result, all his meals must be pureed or cut into small enough pieces that can be swallowed. His meals are prepared entirely separate from other household members. It is extremely time consuming, and she requires the PCA's help. For example, the PCA helps wash and peel his food, such as potatoes and vegetables. Next, the food must be boiled or cooked until soft enough to be pureed and served. The PCA performs all meal related cleanup, such as dishes. During meals, Appellant is constantly grabbing at his food, which causes a mess. In less than a second, food is on the floor. The PCA cleans all these messes as well.

Appellant's mother explained that there are times she cannot be home (e.g. medical appointments) or cannot prepare Appellant's meals, in which case, the PCA assumes all meal preparation and clean-up tasks. Appellant's mother testified that she is highly involved in all aspects of her son's care. However, as she gets older, and her son's needs become more complex, she needs more help to care for her adult son. Appellant's mother clarified that the time requested in the PA request consisted of the PCA portion of meal preparation, and clean-up; and noted that it likely takes longer than the 70-minutes per day.

With respect to other IADLs, no time was requested, or approved, for PCA assistance with housekeeping or grocery shopping. The PCM agency noted that Appellant's mother assumed these tasks entirely. For laundry, the PCM agency requested, and MassHealth approved 30 minutes, noting that Appellant has excess laundry needs due to his incontinence.

The MassHealth representative responded that MassHealth does not pay for "anticipatory" PCA care, such as for those occasions Appellant's mother cannot participate in meal preparation. Further, the MassHealth representative explained no time was requested for meal preparation last PA period. If Appellant's mother feels the overall PCA approval hours are insufficient, this may be a result of the PCM agency not requesting the same amount of time in other areas of care that he had in previous years.

Findings of Fact

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

1. Appellant is an adult MassHealth member over the age of 21, with primary diagnoses of spastic CP, developmental delay, and scoliosis.
2. Appellant is legally blind, non-verbal, and non-ambulatory; he is completely dependent for all ADLs; he lives with his mother who is his court appointed legal guardian.
3. On March 21, 2023, Appellant's PCM agency sent MassHealth a PA request seeking 4 hours and 45 minutes of day/evening PCA services per-week and two nighttime hours per-night for dates of service beginning May 10, 2023 through May 9, 2024.
4. On April 4, 2023, MassHealth modified Appellant's PA request by approving 37 hours and 45 minutes of day/evening PCA services per-week and two nighttime hours.
5. MassHealth modified the time requested for "meal preparation."
6. Appellant's PCM agency requested a total of 70 minutes per-day for PCA assistance with meal preparation and clean-up, broken down as follows: breakfast: 15 minutes; lunch: 20 minutes; dinner: 30 minutes; and snacks: 5 minutes.
7. MassHealth did not approve any time for PCA assistance with meal preparation.
8. Appellant is totally dependent for all meal preparation activities; he does not receive any home delivered meals, nor does he attend programs where he receives meals outside the home.
9. Appellant cannot chew or use utensils; all foods must be softened and pureed so that they can be swallowed.
10. Appellant's mother is highly involved in preparing Appellant's meals; however, it requires two people to perform the entire process meal preparation and cleaning process, including: washing and peeling vegetables, cooking and/or boiling food until soft enough to be pureed and served, cleaning spills made during meals, washing dishes, and other meal-related cleaning tasks.
11. Appellant's meals are prepared separately from other household members.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services¹ to eligible members who can appropriately be cared for in the home, so long as the following four 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.

See 130 CMR 422.403(C).

As indicated in paragraph (4) above, MassHealth determines the medical necessity² of PCA services through its prior authorization (PA) process. See 130 CMR 422.416. The PCM agency is responsible for providing MassHealth with an updated evaluation, completed PA request form, and any documentation that supports the member's need for the requested PCA services. See id. MassHealth will either approve, modify, or deny, a member's request for PCA services, and notify the member accordingly. See 130 CMR 422.417.

Here, there is no dispute that Appellant meets all the pre-requisites to qualify for PCA services. The sole issue on appeal is whether MassHealth appropriately reduced the requested amount of PCA services by denying the time requested for assistance with "meal preparation."

Under MassHealth PCA regulations, "meal preparation and clean-up" is considered an instrumental activity of daily living (IADL). IADLs are defined as "those specific activities listed in 130 CMR 422.410(B) 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,

¹ PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

² 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. See 130 CMR 450.204(A).

maintenance of medical equipment, transportation to medical providers, and completion of paperwork required for the member to receive PCA services. See 130 CMR 422.402 (emphasis added); see also 130 CMR 422.410(B).

When determining the amount of physical assistance required to perform an IADL, MassHealth requires that PCM agencies assume the following:

- (1) When a member is living with family members, the family member³ 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.

See 130 CMR 422.410(C) (emphasis added).

Finally, MassHealth covers the “activity time performed by a PCA in providing assistance with the [ADL or IADL].” 130 CMR 422.411(A). It does not, however, cover assistance in the form of cueing, prompting, supervision, guiding, or coaching, or services provided by family members. See 130 CMR 422.412.

In the present case, Appellant’s PCM agency requested a combined total of 70 minutes-per day for PCA assistance with meal preparation and clean-up of his breakfast, lunch, dinner and snack. See Exh. 5, p. 30. Through its April 4th notice, MassHealth did not approve any PCA time for meal preparation/clean-up. Relying primarily on § 422.410(C), above, MassHealth determined that the requested service was within the responsibility of Appellant’s mother/guardian, and not a payable PCA service. Indeed, when requesting services, providers must presume that a live-in family member will perform household tasks that inevitably overlap with, or incorporate, the same needs of the member. MassHealth, however, limits the scope of § 422.410(C) to those IADLs that are “routine,” and gives the provider the ability to consider the member’s “individual circumstances” when determining the amount of assistance needed. Here, Appellant successfully demonstrated that the requested PCA service is to assist with *non-routine* meal preparation and clean-up tasks, which are highly individualized to the Appellant’s medical needs. Appellant is totally dependent for all aspects of care and cannot meaningfully participate in any aspect of the meal preparation or clean-up process. Because Appellant is unable to chew food, all meals must be served soft, pureed, and/or cut into tiny pieces. While

³ Under MassHealth PCA regulations, a “Family Member” is defined as “the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.”

Appellant's mother performs the bulk of the pureeing process, she testified persuasively that, the IADL of meal preparation is a two-person job. For example, the PCA helps with various steps in the food preparation such as washing and peeling foods before they are cooked. When Appellant's mother is outside of the home, the PCA assumes all meal preparation tasks. Additionally, the PCA performs all meal clean-up tasks, such as washing dishes and cleaning routine messes that Appellant makes during his meals. Appellant's mother explained that it is increasingly difficult to participate in the all the meal preparation tasks her now-adult son requires. She relies heavily on the PCA to provide this additional hands-on activity. In consideration of Appellant's "individual circumstances," 70 minutes per-day of PCA assistance with non-routine meal preparation and clean-up tasks is necessary to meet his care needs. See 130 CMR 422.410(C)(3).

The appeal is APPROVED.

Order for MassHealth

Rescind notice dated April 4, 2023. Approve full amount of time requested per Appellant's prior authorization request for dates of service May 10, 2023 through May 9, 2024.

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.

Casey Groff
Hearing Officer
Board of Hearings

cc:

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