

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Appeal Decision:	Approved	Appeal Number:	2303747
Decision Date:	08/03/2023	Hearing Date:	06/08/2023
Hearing Officer:	Scott Bernard		

Appearance for Appellant:

[REDACTED]

Appearance for MassHealth:

Donna Burns, RN *via* telephone



*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:	PCA
Decision Date:	08/03/2023	Hearing Date:	06/08/2023
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 27, 2023, MassHealth approved the appellant's prior authorization (PA) reevaluation request for PCA services with modifications. (See 130 CMR 422.410 and Exhibit (Ex.) 1). A person who was not the appellant and did not present evidence that he had authority to act of the appellant's benefit, filed this appeal in a timely manner on May 6, 2023. (See 130 CMR 610.015(B) and Ex. 2). MassHealth's modification of a request for PCA services provides a valid ground for appeal. (See 130 CMR 610.032).

On May 8, 2023, the Board of Hearings sent the appellant a letter notifying the appellant that it had dismissed the appeal for failure to demonstrate that he was the MassHealth member, or appeal representative. (Ex. 4). The Board also stated that the appellant could vacate the dismissal if, within 10 days, he submitted a fair hearing request signed by the MassHealth member or a copy of the legal document appointing a personal representative. (Id.). On May 10, 2023, the appellant submitted Letters of Guardianship indicating that the appellant's representative (who submitted the initial appeal) was the appellant's guardian. (Ex. 5). For that reason, the Board scheduled the appeal after this date.

Action Taken by MassHealth

MassHealth approved the appellant's request for PCA but made one modification that resulted in a reduction from the time as initially requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410, in determining that the appellant's request for PCA services should be modified.

Summary of Evidence

The MassHealth representative, a clinical appeals reviewer and registered nurse, testified to the following. According to the documents the PCM agency submitted, the appellant is an individual under the age of 20. (Ex. 7, pp. 3, 7). The appellant has been diagnosed with autism spectrum disorder and is non-verbal. (Ex. 7, pp. 7-8). The PCM agency further wrote:

...PMH: autism, profound intellectual disabilities, nonverbal, behavioral problems. Tactile sensory issues, auditory sensory sensory [sic]. Without caregiver providing for ADL's consumer is at risk for significant health complication as consumer would not complete any self-care tasks. No safety awareness, consumer cannot be left alone.

Current: No recent hospitalizations. Consumer continues to attend in person schooling five days per week at Northshore Education Consortium. Surrogate reports mother is unable to assist with any ADLs and AIDLs d/t cognitive and physical limitations. Surrogate reports he is unable to assist with meal prep d/t worsening glaucoma. Requesting an increase in time to allocate for the increased need with meal prep." (Ex. 7, p. 8).

The PCM agency submitted an annual reevaluation for PCA services on April 18, 2023. (Ex. 7, pp. 34-37). In that submission the PCM agency requested 38 hours of day and evening PCA services per week and two hours per night for one year. (Ex. 1; Ex. 7, pp. 4-6, 34-37). In the notice dated April 27, 2023, MassHealth made one modification to the request and approved 35 hours, 15 minutes of day and evening PCA services and two hours of PCA services per night for dates of service from May 6, 2023, through May 5, 2024. (Ex. 1; Ex. 7, pp. 4-6).

In the reevaluation, the PCM agency requested 60 minutes per day for meal preparation. (Ex. 7, p. 19). This was broken down into 10 minutes for breakfast, 20 minutes for lunch, and 30 minutes for dinner. (Id.). Regarding the need for assistance with meal preparation, the PCM agency wrote that the appellant is "[dependent] with all aspects of meal prep, mother is unable to assist d/t cognitive limitations and father is unable to assist d/t worsening glaucoma, d/t soiling, d/t unable to initiate/sequence/complete tasks, unaware of personal hygiene needs, resist care, decreased FMC, no safety awareness, resistive behaviors and intellectual disability." (Id.). MassHealth modified the time requested for meal preparation to 35 minutes *per* day because this was assistance with an instrumental activity of daily living (IADL), and because the appellant lived with another PCA consumer, the time for IADLs had to be calculated on a shared basis. (Ex. 1; Ex. 7, pp. 4-6).

The MassHealth representative stated that the reason for the modification in the appellant's time was because there were PCA consumers in his household. The appellant's mother (the appellant's representative's wife) also receives PCA services. For this reason, under the regulations, she and the appellant's representative are required to share time for IADLs. IADLs are also modified in this case because the appellant living with a legally responsible family member.¹ MassHealth approved 35 minutes for meal preparation for the appellant. The other household member receives 75 minutes for meal preparation per day during the week and 45 minutes per day on the weekend.

The appellant's representative stated that his son has autism and a lot of behavioral hang ups concerning eating. The appellant also has food allergies. He has special food for these reasons, and his food is cooked separate from his mother's food. The appellant's mother has a special diet because she has diabetes. The appellant's representative stated that he did not know how the PCA could do meal preparation for the appellant and his mother with the times approved.

Findings of Fact

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

1. The appellant is an individual under the age of 20. (Ex. 7, pp. 3, 7).
2. The appellant has been diagnosed with autism spectrum disorder and is non-verbal. (Ex. 7, pp. 7-8).
3. The appellant's mother is unable to assist with any ADLs and AIDLs d/t cognitive and physical limitations. (Ex. 7, p. 8).
4. The PCM agency submitted an annual reevaluation for PCA services on April 18, 2023. (Ex. 7, pp. 34-37).
5. In that submission the PCM agency requested 38 hours of day and evening PCA services per week and two hours per night for one year. (Ex. 1; Ex. 7, pp. 4-6, 34-37).
6. In a notice dated April 27, 2023, MassHealth made one modification to the request and approved 35 hours, 15 minutes of day and evening PCA services and two hours of PCA services per night for dates of service from May 6, 2023, through May 5, 2024. (Ex. 1; Ex. 7, pp. 4-6).
7. In the reevaluation, the PCM agency requested 60 minutes per day for meal preparation broken down into 10 minutes for breakfast, 20 minutes for lunch, and 30 minutes for dinner. (Ex. 7, p. 19).
8. Regarding the need for assistance with meal preparation, the PCM agency wrote that the

¹ The notice did not indicate that this was the case, however. (See Ex. 1; Ex. 7, pp. 4-6).

appellant is “[dependent] with all aspects of meal prep, mother is unable to assist d/t cognitive limitations and father is unable to assist d/t worsening glaucoma, d/t soiling, d/t unable to initiate/sequence/complete tasks, unaware of personal hygiene needs, resist care, decreased FMC, no safety awareness, resistive behaviors and intellectual disability.” (Ex. 7, p. 19).

9. MassHealth modified the time requested for meal preparation to 35 minutes *per* day because this was assistance with an IADL, and because the appellant lived with another PCA consumer, the time for IADLs had to be calculated on a shared basis. (Ex. 1; Ex. 7, pp. 4-6).
10. The other member of the household receives 75 minutes per day during the week and 45 minutes per day on the weekend for meal preparation. (Testimony of the MassHealth representative).
11. The appellant and the other consumer in the household do not eat have different diets based on their health needs. (Testimony of the appellant's representative).

Analysis and Conclusions of Law

The PCM agency must request prior authorization from the MassHealth agency as a prerequisite to payment for PCA services. (130 CMR 422.416(A)). Prior authorization determines only the medical necessity of the authorized service. (*Id.*). MassHealth covers activity time performed by a PCA in providing assistance with activities of daily living (ADLs) and IADLs. (130 CMR 422.411(A)). IADLs are those specific activities that are instrumental to the care of the member's health and include household services such as physically assisting with meal preparation. (130 CMR 422.402; 422.410(B)(2))). In determining the number of hours of physical assistance that a member requires 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(C)).

A preponderance of the evidence shows that MassHealth should approve the time for meal preparation as requested by the PCM agency. It is true that meal preparation is an IADL. It is also true that there is another PCA consumer living in the same household. MassHealth correctly pointed out that when there is another PCA consumer in the household, IADLs are calculated on a share basis. The regulations, however, also require MassHealth to consider individual circumstances when calculating IADLs. The appellant's representative stated that the appellant and the appellant's representative's wife (the other PCA consumer) do not share the same diet. The appellant's representative stated that the appellant has behavioral issues concerning what he will and will not eat arising from his autism. The appellant also has allergies to certain foods. The appellant's representative's wife, meanwhile, has a special diet because she has diabetes. It is logical to surmise that in order to meet the needs of both individuals, they may need more time than average. Under the circumstances described the amount of time the PCM agency requested on the appellant's behalf does not seem unreasonable.

For the above reasons, the appeal is APPROVED.

Order for MassHealth

Approve the time for meal preparation as requested.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc:

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