

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied in part; Approved in part	Appeal Number:	2304116
Decision Date:	8/7/2023	Hearing Date:	06/23/2023
Hearing Officer:	Christopher Jones		

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, RN
Lisa Russell, RN - observing

Interpreter:

Demin Zhuang – ITI Interpreter



*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 in part; Approved in part	Issue:	Prior Authorization – PCA
Decision Date:	8/7/2023	Hearing Date:	06/23/2023
MassHealth's Rep.:	Mary-Jo Elliott, RN; Lisa Russell, RN	Appellant's Rep.:	Mother
Hearing Location:	Remote	Aid Pending:	No

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 25, 2023, MassHealth modified the appellant's request for personal care attendant services, allowing fewer hours than were requested. (Exhibit 3; 130 CMR 422.410.) The appellant filed this timely appeal on May 18, 2023.¹ (Exhibit 2; 130 CMR 610.015(B).) Limitations of assistance are valid grounds for appeal. (130 CMR 610.032.)

Action Taken by MassHealth

MassHealth allowed fewer hours for personal care attendant services than were requested.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.412, in determining that some of the appellant's requested time is non-compensable.

¹ This appeal was initially dismissed by the Board of Hearings on May 18 for the lack of authority to file an appeal. On May 23, the appellant's mother submitted a copy of her guardianship authority, and this matter was scheduled for hearing. (Exhibits 3 - 5.)

Summary of Evidence

On or around April 12, 2023, the appellant's personal care management ("PCM") agency submitted an initial prior authorization request for personal care attendant ("PCA") services. This request sought nine hours and 45 minutes (575 minutes) per week of day/evening services and no nighttime services. The prior authorization period for this request runs from April 25, 2023, through April 24, 2024. The appellant is an adult with a primary diagnosis of autism with related cognitive and fine motor skill deficits. MassHealth modified the time requested for bladder care and meal preparation and allowed five hours and 15 minutes (309 minutes) of day/evening PCA hours per week.

The request sought assistance with bladder care for five minutes four times per day. The request identifies the appellant as needing "minimal" assistance with toileting and requests time to "[a]ssist with clothing management, hygiene and proper hand washing [due to] cognitive deficits." The appellant is described as having "poor hygiene awareness." (Exhibit 7, p. 23.) MassHealth modified this request and allowed three minutes per instance of assistance. MassHealth's representative testified that five minutes seemed excessive for the hands-on time needed to help the appellant straighten his clothing and wash his hands. MassHealth had allowed five minutes for bowel care, and MassHealth's representative felt that it made sense that there might be more hands-on assistance needed with bowel movements. The appellant's mother confirmed that he sometimes needs help wiping after a bowel movement, but she testified that he needs more time because he does not always cooperate with washing his hands. He takes a long time to use the toilet, and the PCA needs to wait for him. The PCA needs to remind him to wash his hands, and sometimes needs to turn the water on and off. MassHealth's representative responded PCA time is only awarded for the hands-on assistance of performing a task, and it does not include waiting time or time for supervision or coaching.

Meal preparation time was requested to provide 15 minutes of assistance twice a week to make lunch and 30 minutes of assistance six days a week to make dinner (210 minutes per week). The reason for the request was that the PCA prepares "lunch when not at school and dinner 6 nights a week as both parents work in a restaurant 6 days a week noon to 8." (Exhibit 7, p. 29.) MassHealth's representative explained that the regulations generally prohibit PCA time for Instrumental Activities of Daily Living ("IADLs") for those who reside with "family members." Because the appellant's mother is his guardian, even though he is an adult, she is still considered a "family member" per regulation.

The appellant's mother testified that they both work out of the house, and they need the assistance to prepare him meals only when they are out of the house at work. MassHealth was asked if they ever allow time for IADLs where family members are unavailable due to work. MassHealth's representative acknowledged that they sometimes allow IADL time for family members, but she testified that this is generally for family members with a physical limitation that prevents them from providing the IADLs. She suggested that the family prepare meals ahead of

time for the appellant. However, it was pointed out that the appellant would still need someone to serve the meal and clean up the meal. MassHealth's representative alternately identified this as "respite care," which is a regulatorily non-covered services.

Findings of Fact

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

1. The appellant is an adult with a primary diagnosis of autism with related cognitive and fine motor skill deficits. (Exhibit 7, p. 7.)
2. On or around April 12, 2023, an initial prior authorization request for PCA services was submitted seeking nine hours and 45 minutes (575 minutes) per week of day/evening services and no nighttime services. The prior authorization period for this request runs from April 25, 2023, through April 24, 2024. (See Exhibit 7.)
3. MassHealth modified the time requested for bladder care and meal preparation and allowed five hours and 15 minutes (309 minutes) of day/evening PCA hours per week. (Exhibit 1.)
4. The appellant requires assistance with toileting to "[a]ssist with clothing management, hygiene and proper hand washing [due to] cognitive deficits." The appellant is described as having "poor hygiene awareness." (Exhibit 7, p. 23.)
5. MassHealth approved the time for bowel care but reduced the amount of time for bladder care from five minutes four times per day down to three minutes four times per day. This reduction was because it seemed that there should be more time for bowel care than bladder care and five minutes seemed excessive for the assistance described. (Testimony by MassHealth's representative.)
6. The appellant's PCA needs to wait for him to use the toilet and needs to supervise him to ensure he thoroughly washes his hands. (Testimony by the appellant's mother.)
7. The appellant requested assistance with meal preparation: 16 minutes twice per week for lunch and 30 minutes six days a week for dinner. The appellant's family works outside of the home from noon to 8 PM six days a week. The total time requested for meal preparation was 210 minutes per week. (Exhibit 7, p. 29; testimony by the appellant's mother.)
8. MassHealth allowed no time for meal preparation because regulation excludes time for IADLs when a member resides with "family members" and also excludes "respite care." (Testimony by MassHealth's representative.)

Analysis and Conclusions of Law

MassHealth generally covers personal care attendant (“PCA”) services provided to eligible MassHealth members with a permanent or chronic disability that impairs their functional ability to perform activities of daily living (“ADLs”) and instrumental activities of daily living (“IADLs”), but who can be appropriately cared for in the home. MassHealth will only approve these services when they are medically necessary, and the member requires assistance with at least two ADLs. (See 130 CMR 422.403(C).)

ADLs include:

- (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 bathing, personal hygiene, or grooming;
- (4) dressing: 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 or bladder needs.

(130 CMR 422.410(A).)

IADLs include:

- (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.

(130 CMR 422.410(B).)

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but it assumes that “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.**” (130 CMR 422.410(C) (emphasis added).)

There are also certain services that MassHealth will not cover:

- (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 [electronic visit verification] as required by the MassHealth agency.

(130 CMR 422.412 (emphasis added).)

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.” (130 CMR 422.402.)

MassHealth does not truly contend that living with a “family member” absolutely precludes IADLs from being approved. MassHealth’s representative confirmed that there are circumstances in which members living with legally responsible family will have IADL time approved. Further, the

expectation expressed in 130 CMR 422.410(C) is that “most IADLs” will be performed by family members. Therefore, some IADLs may appropriately be approved even for members living with legally responsible family. A more appropriate reading of the exclusion in 130 CMR 422.412(F) is that it reinforces the fact that a “family member” cannot be the PCA.² (See 130 CMR 422.404(1)(d).)

Another aspect of this restriction is that applies to “routine IADLs.” In the context of a family, it makes sense to think of the routine of the family. Where a family is able to share chores, they cannot outsource the domestic responsibility of the household to a PCA. If the appellant’s family were home and eating dinner together, they could not expect the PCA to make the appellant’s portion of that meal or cook the meal for the whole family. Here, however, the need arises from the fact that the appellant’s routine is separate from the family routine. As was pointed out during the hearing, even if the appellant’s family members prepared food ahead of time for the appellant, he would still require assistance in the form of being served and having someone clean up after him. MassHealth may object to the amount of time requested for this task, but it cannot simply say that it is non-compensable because the member resides with family.

MassHealth also objected that these services should be considered “respite” care because they are alleviating a responsibility that would typically fall upon a family member. Respite care is not defined in the regulations or any other published guidance by MassHealth. The National Institutes of Health define it as “short-term relief for primary caregivers. It can be arranged for just an afternoon or for several days or weeks. Care can be provided at home, in a healthcare facility, or at an adult day center.” (Available at <https://www.nia.nih.gov/health/what-respite-care> (visited Aug. 3, 2023).) Merriam-Webster’s definition of “respite” includes: “providing or being temporary care in relief of a primary caregiver.” (Available at <https://www.merriam-webster.com/dictionary/respite> (visited August 3, 2023).) In the context of PCA exclusions, this term must apply to temporary arrangements of care, as PCA services are only intended to cover chronic or long-term needs. Therefore, MassHealth’s arguments against meal preparation are unconvincing. This appeal is APPROVED in part with regards to meal preparation.

This appeal is DENIED in part with regards to bladder care. The appellant acknowledged that the additional time arises from the need to wait for the appellant to accomplish a task and to provide supervision and guidance. This is not, therefore, compensable hands-on assistance with an ADL.

The appellant was approved for 309 minutes per week. Restoring 210 minutes for meal preparation brings his total time to 519 minutes, or eight hours and 45 minutes, per week.

Order for MassHealth

Restore the time requested for meal preparation. Allow eight hours and 45 minutes as of the

² I.e., if a service is in fact provided by a family member, it cannot be compensable.

beginning of the prior authorization period, April 25, 2023.

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.

Christopher Jones
Hearing Officer
Board of Hearings

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