

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Dismissed in part;  
Denied in part

**Appeal Number:** 2304925

**Decision Date:** 9/13/2023

**Hearing Date:** 08/31/2023

**Hearing Officer:** Sara E. McGrath

**Appearances for Appellant:**



**Appearances for MassHealth:**

Mary-Jo Elliott, RN

**Interpreter:**

Zully Rodriguez



*Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street  
Quincy, MA 02171*

## APPEAL DECISION

<b>Appeal Decision:</b>	Dismissed in part; Denied in part	<b>Issue:</b>	Prior Authorization for PCA Services
<b>Decision Date:</b>	9/13/2023	<b>Hearing Date:</b>	08/31/2023
<b>MassHealth's Rep.:</b>	Mary-Jo Elliott, RN	<b>Appellant's Rep.:</b>	Parent
<b>Hearing Location:</b>	Board of Hearings, Quincy		

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

Through a notice dated May 24, 2023, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services (Exhibit 1). The appellant filed this appeal in a timely manner on June 16, 2023 (130 CMR 610.015(B); Exhibit 2). The modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)). The Board of Hearings rescheduled the hearing once because the appellant's mother was initially unable to verify the appellant's identity.

### Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

### Issue

Was MassHealth correct in modifying the appellant's prior authorization request for PCA services?

## Summary of Evidence

The MassHealth representative, who is a registered nurse, appeared at the hearing by phone and testified to the following factual background: The appellant is a teen male with diagnoses that include, among others, autism and global developmental delays (Exhibit 3, p. 8). The appellant lives at home with his mother, and receives services from a PCA who is not related to the family. On May 10, 2023, MassHealth received a re-evaluation prior authorization (PA) request for PCA services for the appellant in the amount of 13.25 day/evening hours per week (for 36.28 school weeks) and 15.5 day/evening hours per week (for 16 vacation weeks). On May 24, 2023, MassHealth reviewed the request and modified it to 12.25 day/evening hours per week (for 36.28 school weeks) and 14.5 day/evening hours per week (for 16 vacation weeks). MassHealth only modified time in the category of meal preparation.

The MassHealth representative explained that MassHealth denied the appellant's request for PCA assistance with meal preparation. The appellant requested 15 minutes, 3 times per week, for assistance with lunch preparation, and 5 minutes, 3 times per week, for assistance with snack preparation. The nurse evaluator writes that the appellant is dependent for the tasks of meal and snack preparation and clean up while his mother is at work (Exhibit 3, pp. 29, 58). The MassHealth representative explained that when a member is living with family members, MassHealth expects that family members will provide assistance with most instrumental activities of daily living (IADLs), including meal preparation. In light of this expectation, MassHealth will not authorize time for the PCA to assist with most IADLs when members live with family. Here, because the appellant lives with his mother, MassHealth expects that the mother will perform all tasks related to meal preparation and clean up.<sup>1</sup>

The appellant's mother appeared at the hearing by phone and testified with the assistance of an interpreter. She stated that she does in fact prepare all of the appellant's meals. She stores meals in the refrigerator before she goes to work. The PCA then warms up the food for the appellant; he does not like microwaved food so it must be warmed on the stove. She stated that her son is very demanding about food and eats many times during the day. The appellant's mother clarified that she works Monday through Friday until about 2 pm. After work, she sometimes runs errands or goes shopping. She also stated that during the school year, the appellant is in school 5 days per week. During vacation weeks, he does not attend any programs and is home every day.

The MassHealth representative responded and stated that appellant's schedule does not seem to match the request for assistance. The requesting provider sought assistance with meal preparation 3 times per week, which does not correspond to the appellant's school or vacation schedule. Despite this, the MassHealth representative stated that because the appellant is

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<sup>1</sup> The MassHealth representative added that MassHealth would not authorize time for the PCA to provide any services to the appellant while the mother is at work. Per 130 CMR 422.412(A), MassHealth does not cover babysitting as part of the PCA program. Therefore, when the PCA is in the home, the appellant's mother must be present in order to direct the care.

home all day during vacation weeks, she would restore the time requested for meal preparation during vacation weeks only.<sup>2</sup> For school weeks, she maintains that the denial should stand.

The appellant's mother responded and stated that her son has significant needs. The PCA helps the appellant in many ways.

## **Findings of Fact**

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

1. The appellant is a teen male with diagnoses that include, among others, autism and global developmental delays.
2. On May 10, 2023, MassHealth received a re-evaluation PA request for PCA services for the appellant in the amount of 13.25 day/evening hours per week (for 36.28 school weeks) and 15.5 day/evening hours per week (for 16 vacation weeks).
3. On May 24, 2023, MassHealth reviewed the request and modified it to 12.25 day/evening hours per week (for 36.28 school weeks) and 14.5 day/evening hours per week (for 16 vacation weeks).
4. In the area of meal preparation, the appellant requested 15 minutes, 3 times per week, for assistance with lunch preparation, and 5 minutes, 3 times per week, for assistance with snack preparation. The total time requested was 60 minutes weekly (for both school and vacation weeks).
5. MassHealth initially denied this request in full (for both school and vacation weeks), but at hearing restored the time requested for vacation weeks only.
6. The appellant lives with his mother.
7. During school weeks, the appellant attends school Monday through Friday.
8. On June 16, 2023, the appellant filed a timely appeal of the PCA modification notice.

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<sup>2</sup> The appeal is therefore dismissed as to this issue.

## Analysis and Conclusions of Law

MassHealth regulations concerning Personal Care Attendant (PCA) Services are found at 130 CMR 422.000, *et seq.* PCAs physically assist members with ADLs and IADLs in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410 (130 CMR 422.402). Per 130 CMR 422.403(C), MassHealth pays for PCA services to eligible MassHealth members who can be appropriately cared for in the home when all of 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); and (4) the MassHealth agency has determined that the PCA services are medically necessary. ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(A) Activities of Daily Living (ADLs). Activities of daily living 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, or grooming;
- (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 or 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 personal care services; and

(c) other special needs approved by MassHealth 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 personal care 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

MassHealth also limits coverage to those services that have been determined to be medically necessary. Per 130 CMR 450.204(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 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*.

MassHealth denied the appellant's request for PCA assistance with meal preparation (lunch and snack) during school weeks because it is the responsibility of his family. The record supports this determination. As set forth above, per 130 CMR 422.410(C)(1), when a member is living with family members, the family members will provide assistance with most IADLs, including meal preparation and clean-up. Here, the appellant lives with his mother, and there is no evidence that she is unable to prepare the appellant's meals. On the contrary, she testified that she does in fact prepare all of his meals, and that the PCA simply warms them up. Because family members are

responsible for IADLs, which would include all tasks related to meal preparation, including warming up previously prepared meals, MassHealth did not err in denying the request for assistance with meal preparation during school weeks.<sup>3</sup>

Accordingly, the appeal as to this issue is denied.

## **Order for MassHealth**

None, other than to implement the agreement made at hearing (to authorize 60 minutes weekly for assistance with meal preparation during vacation weeks).

## **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.

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Sara E. McGrath  
Hearing Officer  
Board of Hearings

cc: Optum

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<sup>3</sup> As noted by MassHealth, the PCA program does not cover babysitting (130 CMR 422.412(A)). According to the MassHealth representative, the PCA should not be undertaking any tasks when the appellant's mother is not present. The PCA regulations do not clarify when a minor no longer needs a babysitter and can direct his or her own care. Here, given the appellant's diagnoses, MassHealth's reference to this particular regulation seems reasonable.