

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2307553
Decision Date:	11/15/2023	Hearing Date:	09/14/2023
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:
Pro se; [Redacted] Daughter of Appellant

Appearance for MassHealth:
Robin Brown, O.T., Optum
Laura Rose, 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:	11/15/2023	Hearing Date:	09/14/2023
MassHealth's Rep.:	Robin Brown, RN; Laura Rose, RN	Appellant's Rep.:	Daughter
Hearing Location:	Board of Hearings (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 July 28, 2023, MassHealth informed Appellant that it was modifying her request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1); Exh. 1. On August 28, 2023, Appellant submitted a timely request for a fair hearing to appeal the 7/28/23 notice. See 130 CMR 610.015(B) and Exhibit 2. 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 prior authorization 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 and an occupational therapist, both of whom serve as clinical appeals reviewers for Optum.¹ Appellant was present at hearing and represented by her daughter. Both parties appeared via telephone.

Through testimony and documentary evidence, the MassHealth O.T. representative presented the following information: Appellant is a MassHealth member over the age of 65 with diagnoses of aortic stenosis, gastroesophageal reflux disease (GERD), type 2 diabetes, anemia, osteoporosis, osteoarthritis, and a past surgical history of a liver transplant. See Exh. 4, pp. 7-8. On June 26, 2023, a registered nurse from Appellant's personal care management (PCM) agency conducted a re-evaluation of Appellant's need for continued personal care attendant (PCA) services. On July 21, 2023, following the re-evaluation, the PCM agency sent MassHealth a prior authorization (PA) request on behalf of Appellant, seeking 55 hours and 30 minutes per-week of day/evening PCA services and two hours per-night (14 hours per-week) of nighttime PCA services for dates of service 8/9/23 through 8/8/24. See Exh. 1 and Exh. 4, p. 5. The PCM agency noted that Appellant continued to be dependent for all care, specifically noting that she had a "bladder catheter for frequent spasms – leaks urine, dysphagia, frequent sepsis from UTI's and chronic frequent diarrhea." See Exh. 4, p. 8. The PA request further noted that Appellant did not live with live with a legally responsible person, such as a spouse or legal guardian. See id. at 25.

Through a letter dated July 28, 2023, MassHealth notified Appellant that it modified her request for PCA services, by approving the day/evening services at 51 hours and 45 minutes per-week and approving the nighttime hours at 2-hours per night as requested. See id. MassHealth modified the request with respect to the instrumental activities of daily living (IADLs) of meal preparation and housekeeping. Id. MassHealth approved all other IADLs and activities of daily living (ADLs) as were requested by the PCM agency. The parties addressed each modification as follows:

1. Meal Preparation

Appellant requested a total of 90 minutes per-day, seven days per-week (90x1x7) for PCA assistance with meal preparation and clean-up. See Exh. 4, p. According to the PA request, the total time was broken down as follows: 20 minutes for breakfast, 20 minutes for lunch, 40 minutes for dinner, and 10 minutes for snacks. Id. The PCM agency noted that Appellant requires total dependence for meal preparation and clean-up and that she does not receive any meals via home delivery service or through outside program. Id. She has decreased cognition and memory; is unable to lift, carry, bend, push or pull; she has increased weakness and

¹ Optum is the third-party agency that contracts with MassHealth to assist in administering various MassHealth long-term service and support programs, including the personal care attendant program.

shortness of breath; decreased strength and balance; and experiences frequent falls. Id.

MassHealth modified the time for meal preparation to a total of 60 minutes per-day. See Exh. 1. The MassHealth representative testified that the time requested for assistance is longer than ordinarily required for someone with Appellant's physical needs and who lives with a family member. The MassHealth representative stated that when a family member lives with the consumer, it is expected that the family member will contribute to commonly shared IADL tasks such as meal preparation, housekeeping, and shopping. Here, it appeared that Appellant's daughter lived with Appellant and on this basis, MassHealth reduced the time that had been requested for this IADL.

Appellant's daughter testified on behalf of her mother and explained that Appellant resides by herself in one unit of a duplex which they co-own, and that she (the daughter) lives in the other unit. They do not reside together. The daughter also testified that Appellant has vascular dementia and Parkinson's. She is on a special diet of soft foods, that only she eats, and which take a long time to prepare. Meal preparation not only consists of gathering the food and ingredients and cooking it, but also having to prepare it into a gravy or puree consistency. This also causes the clean-up process to take longer due to the amount of equipment used, including the Ninja blender. Appellant's daughter explained that the re-evaluation was performed by a registered nurse that came into Appellant's home and observed all the required steps to prepare her meals. The requested time accurately reflects the time that is needed – which is at least 90 minutes per day.

2. Housekeeping

Next, the MassHealth representative testified that Appellant requested 60 minutes per-week (60x1) of PCA assistance with housekeeping. See id. at 29. Pursuant to its re-evaluation, the PCM agency found Appellant was totally dependent for the IADL of housekeeping. In support of the request, the PCM agency noted that Appellant was totally dependent for housekeeping tasks, that she decreased cognition and memory, decreased strength and balance, and frequent falls. Id.

MassHealth modified the request by approving 45 minutes per-week for PCA assistance with housekeeping. See Exh. 1. The MassHealth representative testified that the request was modified because the time requested was longer than is ordinarily required for someone with Appellant's physical needs and that other family members are available in the home to assist with housekeeping. The representative explained that 45 minutes per-week is typically the maximum time allowed for a consumer that has other family members available in the household to assist with IADLs.

Appellant's daughter testified that she disagreed with the modification, as Appellant does not have other family members that live with her. The daughter reiterated that she resides in the

neighboring unit and that Appellant occupies her own unit and living space. Appellant's unit consists of two floors, although Appellant mostly stays to the first floor. On the first floor there is a kitchen, a bathroom with a walk-in-tub and a separate half bathroom, her living room and bedroom. Appellant is unable to perform any housekeeping activities herself and requires assistance with tidying her living area, taking out the trash, and changing bed linens. Appellant's daughter testified that Appellant's condition causes her to sweat excessively and because of this her bed linens are changed every daily and there is a need to keeping her couch and sitting spaces clean. The daughter testified that at least 10 minutes per day is spent on housekeeping tasks and that the PCM agency's request was appropriate and necessary.

Findings of Fact

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

1. Appellant is a MassHealth member over the age of 65 with diagnoses of aortic stenosis, GERD, type 2 diabetes, anemia, osteoporosis, osteoarthritis, and a past surgical history of a liver transplant.
2. Appellant and her daughter co-own a duplex residence with Appellant occupying one unit by herself, and her daughter occupying the other unit.
3. Appellant does not live with live with a legally responsible person, such as a spouse or legal guardian.
4. On June 26, 2023, a registered nurse from Appellant's PCM agency conducted a re-evaluation of Appellant's need for continued PCA services.
5. Pursuant to the evaluation, the PCM agency found that Appellant has a bladder catheter for frequent spasms – leaks urine, dysphagia, frequent sepsis from UTI's and chronic frequent diarrhea.
6. The re-evaluation revealed that Appellant has decreased cognition and memory; is unable to lift, carry, bend, push or pull; has increased weakness and shortness of breath; decreased strength and balance; and experiences frequent falls.
7. On July 21, 2023, following the re-evaluation, the PCM agency sent MassHealth a PA request on behalf of Appellant, seeking 55 hours and 30 minutes per-week of day/evening PCA services and two hours per-night (14 hours per-week) of nighttime PCA services for dates of service 8/9/23 through 8/8/24.
8. On July 28, 2023, MassHealth modified Appellant's PA request by approving

day/evening PCA services at 51 hours and 45 minutes per-week, based on modifications to the specific IADL categories of meal preparation and housekeeping.

9. Appellant requested a total of 90 minutes per-day, seven days per week (90x1x7) for PCA assistance with meal preparation and clean-up, comprised of: 20 minutes for breakfast, 20 minutes for lunch, 40 minutes for dinner, and 10 minutes for snacks.
10. Appellant requires total dependence for meal preparation and clean-up, and she does not receive any meals via home delivery service or through outside program.
11. MassHealth modified the time for meal preparation to a total of 60 minutes per-day.
12. Appellant has vascular dementia and Parkinson's and requires a special diet of soft foods which involves multiple steps in food preparation and cleaning process.
13. Through the PA request, Appellant requested 60 minutes per-week (60x1) of PCA assistance with housekeeping.
14. Appellant is totally dependent with housekeeping tasks.
15. MassHealth modified the time for housekeeping and approved 45 minutes per-week for this IADL category.
16. Appellant primarily occupies the first floor of her unit, which consists of a kitchen, a bathroom with a walk-in-tub and a separate half bathroom, a living room and bedroom.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services² 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).

² 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.

(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 necessity³ 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 modified the time requested for PCA assistance for meal preparation and housekeeping.

Under its PCA regulations, MassHealth considers housekeeping and meal preparation and clean-up as instrumental activities of daily living (IADLs). 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, 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 member 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 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).

- (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).

With respect to subsection (1), above, the term “family member,” as defined by MassHealth PCA regulations, means “the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.” 130 CMR 422.401.

For all categories of PCA care, including both ADLs and IADLs, MassHealth will approve, and reimburse for, the “activity time performed by a PCA in providing assistance with the [ADL or IADL].” 130 CMR 422.411(A). MassHealth 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 90 minutes-per day for PCA assistance with meal preparation and clean-up and a total of 60 minutes per-week for PCA assistance with housekeeping. See Exh. 5, p. 30. Through its 7/28/23 notice, MassHealth modified the requested IADLs by approving 60 minutes for meal preparation and 45 minutes for housekeeping. The modifications were based, in part, on § 422.410(C)(1), which reflects MassHealth’s presumption that a live-in family member will contribute to household tasks that overlap with, or incorporate, the needs of the member. At hearing, Appellant’s daughter testified that Appellant does not live with any family members, as she occupies her own unit of a duplex, with the neighboring unit being occupied by her daughter.⁴ The PCM agency also noted that Appellant does not live with a legally responsible person, such as a spouse or legal guardian and is totally dependent for all aspects of care. See Exh. 4. Additionally, the evidence shows that the nature of the requested care is to assist Appellant with her unique needs and individual circumstances, such as having to puree foods, cleaning specialized meal preparation equipment, and frequently changing bed linens – much of which would not qualify as assistance with “routine” IADLs as contemplated under § 422.410(C)(1). As Appellant’s daughter persuasively testified, the requests for 90 minutes per-day for meal preparation and clean-up and 60 minutes per-week for housekeeping, were made by a registered nurse after performing an in-person evaluation of Appellant, and accurately reflect the time that is medically necessary for a PCA to assist Appellant with these tasks. See 130 CMR 422.410(C)(3). In consideration of the evidence in the record, Appellant successfully demonstrated that her PA request should not have been modified in the areas of meal preparation and housekeeping.

Based on the foregoing, this appeal is APPROVED.

⁴ It is also noted that Appellant’s daughter is not considered a “family member” under MassHealth’s definition, as there is no evidence that she is legally responsible for her mother.

Order for MassHealth

Rescind notice dated July 28, 2023. Approve full amount of time requested per Appellant's PA request for PCA services dates of service 8/9/23 through 8/8/24. Notify Appellant of updated authorized PCA hours accordingly.

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, Esq.
Hearing Officer
Board of Hearings

cc:

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

[REDACTED]