

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part Denied in part	Appeal Number:	2311251
Decision Date:	02/02/2024	Hearing Date:	12/14/2023
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown, OTR/L

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:	Approved in part Denied in part	Issue:	Prior Authorization PCA
Decision Date:	02/02/2024	Hearing Date:	12/14/2023
MassHealth's Rep.:	Robin Brown OTR/L	Appellant's Rep.:	Pro se
Hearing Location:	Quincy		

Authority

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

Jurisdiction

Through notice dated October 13, 2023, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed for this appeal in a timely manner on November 9, 2023 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth properly applied the controlling regulation(s) to accurate facts when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone. Appellant's representatives were assisted by a [REDACTED] interpreter.

MassHealth filed a packet of documentation which includes copies of the subject Prior Authorization request and the attendant Nurse's Evaluation (collectively, Exhibit B).

MassHealth was represented by a Registered Occupational Therapist and clinical appeals reviewer who testified that the written prior authorization request identified Appellant as follows: Appellant is an adult male in his [REDACTED] who resides with his parents who are his legal guardians. Appellant stands [REDACTED]" tall and weighs [REDACTED]. Appellant has primary diagnoses of autism; developmental delays; aggression; violent outbursts; self-injurious behaviors/aka SIBs (bites and hits self with frustration and agitation); and other maladaptive behaviors including pacing, touching everything, and punching walls. Appellant is physically resistant to care, incontinent of bowel and bladder and suffers with insomnia. Appellant refuses to eat solid foods, is on a pureed diet and needs to be fed all foods for adequate nutritional intake. Appellant's home environment requires additional safety measures such as protective bars on windows and special door locks to prevent elopement. All paper products must be kept out of Appellant's sight and reach as he obsessively shreds them.

The MassHealth representative testified that a PA request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on 10/10/2023 by UCP (subsequently transferred to ETHOS on 10/23/2023). The subject request sought 60 hours and 30 minutes per week of PCA services for one year. MassHealth modified the request to 53 hours for one year (dates of service: 10/13/2023 to 10/12/2024).

MassHealth made one modification to the time to assist with Activities of Daily Living (ADLs) (time to assist with mobility). MassHealth made 2 modifications to time to assist with Instrumental Activities of Daily Living (IADLs) (meal preparation and laundry).

After exchanging testimony, Appellant's representative agreed with MassHealth's modification of time for meal preparation (reduced from 70 minutes 7 days per week to 30 minutes per week) and assistance with laundry (originally reduced from 90 minutes per week to 30 minutes but increased to 60 minutes per week by the MassHealth representative at hearing). Appellant's representative agreed to both of these modifications based on MassHealth's reliance on regulation 130 CMR 422.410(C)(1) governing assistance with IADL's when the member lives with a legally responsible person. Appellant's representative did not agree with MassHealth's reduction in time requested for time with mobility.

Mobility – Appellant requested 4 minutes, 8 times per day, 7 days per week. MassHealth modified by reducing the time for each instance of assistance from 4 minutes down to 2 minutes and leaving the frequency of 8 times per day 7 days per week unchanged. MassHealth based this modification on its determination that the time requested for assistance with mobility is longer than ordinarily required for someone with Appellant's physical needs. MassHealth highlighted the notes provided by the reviewing nurse on the nursing evaluation. The evaluating nurse wrote that Appellant has a tendency of pacing and does not follow directions, requires hands-on guidance to move safely in the home from one task to another. Appellant cannot follow simple instructions such as "sit down" and needs arm/handheld to guide from place to place and to protect Appellant from self-injurious behaviors and his family from Appellant's aggression as well as to accomplish ADLs.

Appellant's representative was joined by Appellant's mother who testified Appellant suffered brain damage, is non-verbal and will not sleep for days or weeks at a time. She testified that she and the PCA have to assist Appellant with everything all day long. Appellant's mother described how difficult it is to physically control Appellant especially now that he is grown and no longer a boy. She explained that the difficulty is exacerbated by the fact that Appellant cannot communicate what he wants and becomes frustrated and physically reactive as a result. Appellant's mother testified that Appellant is moving throughout the home all day long. Appellant's mother explained that it takes a long time to assist Appellant while he is moving because he is mostly wandering, not just going between one place and another. Additionally, Appellant will not listen to directions, has to be physically directed while he moves and is often uncooperative and resistant to such direction.

The MassHealth representative made no response.

Meal Preparation - Appellant requested 70 minutes, 7 days per week to assist with meal preparation (10 minutes for breakfast, 20 minutes for lunch, 30 minutes for dinner and 10 minutes for a snack). The Masshealth representative noted the nurse evaluator's comment that all of Appellant's food is pureed. MassHealth modified by reducing the total time per day from 70 minutes to 30 minutes on the grounds that Appellant lives with someone (spouse/legal guardian/other) who is legally responsible to provide this assistance to him (citing 130 CMR 422.410(C)(1)). The MassHealth representative explained that because of this regulation, MassHealth usually would not allow any time for assistance with meal preparation, but because it involves having to puree all of the food, MassHealth allowed the 30 minutes.

Appellant's representatives testified that Appellant's food is chopped, not pureed, and she doubted that Appellant's breakfast could be prepared in as little as 10 minutes. But, as noted above, Appellant's representative accepted the modification based on the cited regulation.

Laundry - Appellant requested 90 minutes per week to assist with laundry. MassHealth modified to 45 minutes per week. Again, MassHealth based on the modification on the

grounds that Appellant lives with someone (spouse/legal guardian/other) who is legally responsible to provide this assistance to him (citing 130 CMR 422.410(C)(1)).

Appellant's representatives testified that Appellant is incontinent of bowel and bladder and his clothes and bedding need to be washed every day. They testified that there is no washing machine in the home and all the washing is done daily piece by piece by hand. They explained that the PCA cannot leave the home to do the wash because Appellant cannot be left alone. As with the previous modification, Appellant's representatives stated they accepted the modification based on the regulation cited by MassHealth.

Based on this testimony, MassHealth agreed to increase the time to assist with laundry from 45 minutes per week to 60 minutes per week.

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. The MassHealth representative is a Registered Occupational Therapist and clinical appeals reviewer.
2. Appellant is an adult male in his [REDACTED] who resides with his parents who are his legal guardians.
3. Appellant stands [REDACTED] tall and weighs [REDACTED].
4. Appellant has primary diagnoses of autism; developmental delays; aggression; violent outbursts; self-injurious behaviors/aka SIBs (bites and hits self with frustration and agitation); and other maladaptive behaviors including pacing, touching everything, and punching walls.
5. Appellant is physically resistant to care, incontinent of bowel and bladder and suffers with insomnia. Appellant refuses to eat solid foods, is on a pureed diet, and needs to be fed all foods for adequate nutritional intake.
6. Appellant's home environment requires additional safety measures such as protective bars on windows and special door locks to prevent elopement.
7. All paper products must be kept out of Appellant's sight and reach as he obsessively shreds them.

8. A PA request for a Personal Care Attendant (PCA) re-evaluation was submitted to MassHealth on 10/10/2023 by UCP (subsequently transferred to ETHOS on 10/23/2023).
9. The PA requested 60 hours and 30 minutes per week of PCA services for one year.
10. MassHealth modified the request to 53 hours for one year (dates of service: 10/13/2023 to 10/12/2024).
11. MassHealth made one modification to time to assist with ADLs (time to assist with mobility) and two modifications to time to assist with IADLs (meal preparation and laundry).
12. After exchanging testimony, Appellant's representative agreed with MassHealth's modification of time for meal preparation (reduced from 70 minutes 7 days per week to 30 minutes 7 days per week) and assistance with laundry (originally reduced from 90 minutes per week to 30 minutes but increased to 60 minutes per week by the MassHealth representative at hearing).
13. Appellant's representative agreed to both of the IADL modifications based on MassHealth's reliance on regulation 130 CMR 422.410(C)(1) governing assistance with IADLs when the member lives with a legally responsible person.
14. Appellant's representative did not agree with MassHealth's reduction in time requested for assistance with mobility.
15. Appellant requested 4 minutes, 8 times per day, 7 days per week to assist with mobility.
16. MassHealth modified time to assist with mobility by reducing the time for each instance of assistance from 4 minutes down to 2 minutes and left the frequency of 8 times per day, 7 days per week unchanged.
17. Appellant has a tendency of pacing and does not follow directions, requires hands-on guidance to move safely in the home from one task to another.
18. Appellant cannot follow simple instructions such as "sit down" and needs arm/handheld to guide from place to place and to protect Appellant from self-injurious behaviors and his family from Appellant's aggression as well as to accomplish ADLs.
19. Appellant suffered brain damage, is non-verbal and will not sleep for days or weeks at a time.
20. Appellant's mother and the PCA have to assist Appellant with everything all day long.

21. It is difficult to physically control Appellant especially now that he is grown and no longer a boy - a difficulty that is exacerbated by the fact that Appellant cannot communicate what he wants and becomes frustrated and physically reactive as a result.
22. Appellant moves/wanders throughout the home all day long.
23. Appellant will not listen to directions, has to be physically directed while he moves and is often uncooperative and resistant to such direction.
24. Appellant requested 70 minutes, 7 days per week to assist with meal preparation (10 minutes for breakfast, 20 minutes for lunch, 30 minutes for dinner and 10 minutes for a snack).
25. MassHealth modified by reducing the total time per day from 70 minutes to 30 minutes on the grounds that Appellant lives with someone (spouse/legal guardian/other) who is legally responsible to provide this assistance to him.
26. Because Appellant lives with someone who is legally responsible to provide assistance to him, MassHealth usually would not allow any time for assistance with meal preparation, but because it involves having to puree/cut all of the food, MassHealth allowed the 30 minutes.
27. Appellant requested 90 minutes per week to assist with laundry.
28. MassHealth modified to 45 minutes per week on the grounds that Appellant lives with someone (spouse/legal guardian/other) who is legally responsible to provide this assistance to him.
29. Because Appellant is incontinent of bowel and bladder, his clothes and bedding need to be washed every day.
30. There is no washing machine in the home and all the laundry is done daily, piece by piece by hand inside the home.
31. The PCA cannot leave the home to do the wash because Appellant cannot be left alone.
32. At hearing, MassHealth agreed to increase the time to assist with laundry from 45 minutes per week to 60 minutes per week.

Analysis and Conclusions of Law

Mobility – Approved

While the MassHealth representative acknowledged the nurse evaluator's comments concerning Appellant's mobility needs, she failed to explain how these comments justified a two-minute reduction in time per incidence of assistance with mobility. The approved two minutes per incidence might be appropriate if Appellant were simply going from one specific place in the house to another – such as going from his bedroom to the kitchen in the morning. But the testimony from Appellant's representatives, which was consistent with the nurse evaluator's comments, indicated that Appellant was not merely going from one location to another. Instead, he is wandering the house all day long. A total of 32 minutes per day (4 minutes, 8 times per day), as requested, is not unreasonable reasonable given this fact (130 CMR 450.204(A)).

Meal Preparation – Denied

Regulation 130 CMR 420.410, in pertinent part, states:

(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.

MassHealth indicated that given this regulation, time for assistance with meal preparation would normally not be approved, but 30 minutes per day was allowed because of the need to modify Appellant's food (puree or cut). This acknowledges the regulation's use of the word "***routine***" insofar as having to puree or cut all of a person's food would not be routine meal preparation. As this was the only aspect of meal preparation that would fall outside of "routine" the modification down to 30 minutes per day is reasonable to address this "non-routine" feature of Appellant's meal preparation (130 CMR 450.204(A) and 130 CMR 420.410(C)).

Laundry – Approved

MassHealth reduced the original request for time to assist with laundry from 90 to 45 minutes. At hearing, MassHealth increased the time to 60 minutes. Again, given the above-cited regulation, this would appear to be based on the fact that Appellant's laundry needs are not

routine. However, the increase is not sufficient. Appellant's representatives testified that there is no washing machine in the home and the PCA is unable to leave the home to do the wash because Appellant cannot be left alone. Consequently, the laundry, that has to be done daily due to Appellant's bowel and bladder incontinence, is washed piece by piece by hand in the home. This is extremely labor and time intensive. Unlike machine washing, hand washing does not simply involve gathering, and loading/unloading the washing machine and folding. The requested 90 minutes, which is the customary maximum for assistance with laundry, is justified (130 CMR 450.204(A) and 130 CMR 420.410(C)).

At hearing, Appellant's representatives did not dispute this modification based on the regulation that was cited to them by MassHealth. Nevertheless, for the reasons just cited, I find MassHealth's adjustment inadequate given the salient facts. When these facts are properly applied to the controlling regulation, the requested 90 minutes for assistance with laundry is appropriate.

For the foregoing reasons, the appeal is **APPROVED** as to restoring time as requested for mobility and laundry and **DENIED** as to the adjustment for meal preparation.

Order for MassHealth

Restore time for mobility to 4 minutes, 8 times per day, 7 days per week and time for laundry to 90 minutes per week.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

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