

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Approved in Part	Appeal Number:	2312406
Decision Date:	02/20/2024	Hearing Date:	01/05/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayan



*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:	Dismissed in Part; Approved in Part	Issue:	Prior Authorization; Personal Care Services
Decision Date:	02/20/2024	Hearing Date:	01/05/2024
MassHealth's Rep.:	Kelly Rayan	Appellant's Rep.:	Father
Hearing Location:	All Parties Appeared by Telephone	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 November 7, 2023, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1A; Exhibit 1B). The appellant filed this appeal in a timely manner on December 1, 2023. (130 CMR 610.015(B); Exhibit 2). A copy of a guardianship decree was submitted to the Board of Hearings and the appellant's guardian appeared at the hearing. (Exhibit 3). A decision regarding the scope or amount of assistance is valid grounds for appeal. (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care services.

Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for personal care services. (130 CMR 422.410).

Summary of Evidence

The appellant is an adult who has primary diagnoses of [REDACTED] autism, diabetes, low vision and difficulty hearing. (Testimony; Exhibit 5). The appellant lives with family members including his legal guardian. (Testimony; Exhibit 5). To make the appellant feel more independent, there is a special area of the home with a kitchenette where the appellant spends most of his time. (Testimony; Exhibit 5). The appellant attends an adult day health program six hours each day, 5 days each week. (Testimony; Exhibit 5). On September 14, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services. (Testimony; Exhibit 5).

The appellant requested 54.75 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 5). MassHealth modified this request and approved 49.25 day/evening hours and 2 nighttime hours. (Testimony; Exhibit 5). The dates of service are November 11, 2023 to November 10, 2024. (Testimony; Exhibit 5).

Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for assistance with laundry, 60 minutes each week. The MassHealth representative based this adjustment on testimony of the appellant's legal guardian that the appellant has incontinence issues, at times requires three outfits each day and needs to change bedding daily.

MassHealth also modified the time requested to the following instrumental activities of daily living due to the fact that the appellant lives with his legal guardian: meal preparation, housekeeping and shopping. (Testimony; Exhibit 5). The MassHealth representative testified that the regulations limit MassHealth's ability to authorize time for services that are typically performed by a legally responsible family member. The regulations at 130 CMR 422.402 define a family member as the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative. In this case, MassHealth determined the appellant's father and legal guardian is a legally responsible relative. MassHealth approved time for some tasks because the appellant's legal guardian is working.

The appellant requested a total of 75 minutes each day, 7 days each week for assistance with meal preparation or a total of 525 minutes each week. (Testimony; Exhibit 5). As noted above, the appellant attends an adult day health program 5 days each week. (Testimony; Exhibit 5). The appellant brings lunch to the program. (Testimony; Exhibit 5). MassHealth approved 60 minutes each day, 5 days each week or a total of 300 minutes each week. (Testimony; Exhibit 5). The MassHealth representative testified that the agency considered the fact that the appellant's legal guardian is working so approved time for the PCA to assist with preparing some meals with the presumption that the family eats some meals together and the legal guardian is responsible for preparation of those meals. Both parties acknowledged that the appellant has been approved for 75 minutes each day, 7 days each week for assistance with

meal preparation in the past. The MassHealth representative noted that the agency's decision each year is based upon records and information submitted with the prior authorization request.

The appellant's guardian testified that the appellant's diet has changed and meals require more preparation time as the PCA must measure the amount of carbohydrates that the appellant consumes due to his medical conditions. The appellant's guardian testified that the appellant loves to eat and his weight can fluctuate which impacts his medical conditions and makes meal preparation more complicated. The appellant's father testified that the appellant has a full breakfast, lunch, dinner and snacks. The appellant's father testified that the appellant cannot always eat the same meals as other family members due to his complex dietary needs as well as strong preferences and dislikes. The documentation submitted with the request for PCA services states that the appellant's legal guardian works long hours and is unable to prepare meals. (Exhibit 5). At hearing, the appellant's legal guardian testified that he often travels for work.

The appellant requested 45 minutes each week for housekeeping and 45 minutes each week for shopping. (Testimony; Exhibit 5). MassHealth denied all of the time requested for each task because the appellant resides with his legal guardian. As noted above, now that the appellant is older, he has a separate space in the home where he spends most of his time to make him feel more independent. The area has a kitchenette and the PCA is responsible for keeping track of items necessary for that area as well as shopping for food to accommodate the appellant's special dietary needs, snacks and prescriptions.

The appellant's guardian testified that the separate area where the appellant spends most of his time requires cleaning up. As noted above, the area has a kitchenette that is utilized and needs cleaning. The appellant often drools and spills items that require cleaning in that area as well. The appellant also has a separate bedroom in the home. As noted above, MassHealth did provide time for meal preparation and laundry due to the fact that the appellant's guardian is working and the appellant has complex needs.

Findings of Fact

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

1. The appellant is an adult who has primary diagnoses of [REDACTED] autism, diabetes, low vision and difficulty hearing.
2. The appellant resides with family members including his legal guardian.
3. The appellant's legal guardian is working.

4. The appellant attends an adult day health program 6 hours each day, 5 days each week.
5. To make the appellant feel more independent, there is a separate area of the home with a kitchenette where the appellant spends most of his time.
6. On September 14, 2023, MassHealth received a re-evaluation request for Personal Care Attendant (PCA) services.
7. The appellant requested 54.75 day/evening hours and 2 nighttime hours.
8. MassHealth approved 49.25 day/evening hours and 2 nighttime hours.
9. The dates of service are November 11, 2023 to November 10, 2024.
10. Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for assistance with laundry, 60 minutes each week.
11. The appellant requested 75 minutes each day, 7 days each week for assistance with meal preparation or a total of 525 minutes each week.
12. MassHealth approved 60 minutes, 5 days each week or a total of 300 minutes each week.
13. The appellant brings lunch to the adult day health program.
14. In the past, the appellant was approved for 75 minutes each day, 7 days each week for meal preparation.
15. The appellant has dietary restrictions and meals require more preparation time as the PCA measures the amount of carbohydrates that the appellant consumes due to his medical conditions.
16. The appellant's weight can fluctuate which impacts his medical conditions and makes meal preparation more complicated.
17. Each day the appellant has a full breakfast, lunch, dinner and snacks.
18. Due to complex dietary needs, the appellant cannot always eat the same meals as other family members.

19. The appellant requested 45 minutes each week for housekeeping
20. MassHealth denied all of the time requested for housekeeping because the appellant resides with his legal guardian.
21. The PCA is responsible for keeping track of and shopping for items necessary for the separate area of the home where he appellant spends most of his time as well as shopping for food to accommodate the appellant's special dietary needs, snacks and prescriptions.
22. The separate area where the appellant spends most of his time requires cleaning.
23. The appellant often drools and spills items.
24. The appellant has a separate bedroom in the home.
25. The appellant requested 45 minutes each week for shopping.
26. MassHealth denied all of the time requested for shopping.
27. The appellant keeps snacks and other items in the separate area of the home where he spends most of his time.
28. The PCA monitors supplies for that area and purchases items as needed.
29. The PCA shops for prescriptions and items to accommodate the appellant's special dietary needs.

Analysis and Conclusions of Law

MassHealth covers personal care services only when provided to eligible MassHealth members, subject to the restrictions and limitations described in the MassHealth regulations. (130 CMR 422.403). MassHealth covers personal care services provided 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 following ADLs:

- a. mobility, including transfers;
- b. assistance with medications or other health-related needs;
- c. bathing or grooming;
- d. dressing;
- e. passive range-of-motion exercises;
- f. eating; and
- g. toileting.

(4) MassHealth has determined that the PCA services are medically necessary. (130 CMR 422.403(C)).

The appellant meets the conditions to receive PCA services. (130 CMR 422.403(C)).

Prior authorization for PCA services determines the medical necessity of the authorized service. (130 CMR 422.416).

The regulations for MassHealth define a service as “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. (130 CMR 450.204(A)).

Medically necessary services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records, including medical records, available to the MassHealth agency upon request. (130 CMR 450.204(B)).

As MassHealth agreed to adjust their decision and approve the time requested for laundry, that part of the appeal is dismissed. (130 CMR 610.051(B)).

Instrumental activities of daily living include physically assisting a member with household

management tasks that are incidental to the care of the member including: laundry, shopping and housekeeping. (130 CMR 422.401(B)(1)). Instrumental activities of daily living also include meal preparation and clean-up. (130 CMR 422.402(B)(2)).

In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for instrumental activities of daily living (IADLs), the Personal Care Management (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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs. (130 CMR 422.410(C)).

The regulations define a family member 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). The appellant's father, who is also his legal guardian, meets the definition of a legally responsible relative.

The fact that MassHealth approved time for meal preparation, due to the fact that the appellant's legal guardian is working, supports approval of time for other instrumental activities of daily living such as housekeeping and shopping. Additionally, the fact that the appellant has a designated area of the home to promote independence supports the approval for housekeeping for that area as well as the bedroom. Also, the separate meal preparation, area of the home where the appellant keeps snacks and PCA's role in picking up medication supports approval of time for shopping. The time requested for meal preparation, housekeeping and shopping is approved.

This appeal is dismissed in part and approved in part.

Order for MassHealth

Adjust the modifications made to the time requested for PCA services and approve all of the time requested as of November 11, 2023. This includes the time requested for:

- Meal Preparation: 75 minutes each day;
- Laundry: 60 minutes each week;

- Housekeeping; 45 minutes each week; and
- Shopping: 45 minutes each week.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

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

