

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part;
Dismissed in part

Appeal Number: 2401262

Decision Date: 04/05/2024

Hearing Date: 03/01/2024

Hearing Officer: Alexandra Shube

Appearance for Appellant:

Via telephone:



Appearance for MassHealth:

Via telephone:

Kelly Rayen, RN



*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; Dismissed in part | Issue: | Prior Authorization – PCA |
| Decision Date: | 04/05/2024 | Hearing Date: | 03/01/2024 |
| MassHealth's Rep.: | Kelly Rayen, RN | Appellant's Rep.: | Mother/Guardian; Father |
| Hearing Location: | Quincy Harbor South 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 January 11, 2024, 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 January 25, 2024 (see 130 CMR 610.015(B) and Exhibit 2). Modification and/or denial of PCA hours is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

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

Issue

The appeal issue is whether MassHealth was correct in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant was represented at hearing via telephone by his father and mother, who is his legal guardian.

The MassHealth representative testified that documentation submitted shows the appellant is an adult male under the age of 65 with a primary diagnosis of [REDACTED]. Relevant medical history shows cognitive limitations, developmentally delayed, poorly developed concepts, severe spasticity, and tremors.

On December 21, 2023, the appellant's personal care management (PCM) agency, ARC of the South Shore, submitted a prior authorization request for PCA services requesting 63 hours and 30 minutes per week of PCA assistance for dates of service of January 28, 2024 through January 27, 2025. On January 11, 2024, MassHealth modified the request to 60 hours per week. MassHealth made modifications related to PCA assistance with the following activities of daily living (ADLs) and instrumental activities of daily living (IADLs): other healthcare needs (eating a snack); laundry; meal preparation; housekeeping; and shopping. At hearings, parties were able to resolve the disputes related to other healthcare needs, housekeeping, and shopping. Based on testimony, MassHealth fully restored the time as requested for other healthcare needs (eating a snack) to 10 minutes, 1 time per day, 7 days per week and for shopping to 45 minutes per week. The appellant had originally requested 70 minutes per week for housekeeping, which MassHealth modified to 45 minutes per week. Based on testimony at hearing, MassHealth offered to increase the time to 60 minutes per week for housekeeping, which the appellant's accepted. PCA assistance with laundry and meal preparation remain at issue.

Laundry

The appellant requested 135 minutes per week for assistance with laundry. MassHealth approved 90 minutes per week because the consumer lives with his legal guardian who is responsible for IADLs such as laundry. She explained that time approved for laundry is only the hands-on acts of putting the laundry into the washing machine, transferring the load to the dryer, folding, and putting away the clothes. It does not include the time the clothes are in the washing machine or dryer.

The appellant's parents testified that the appellant has major incontinence issues which create excessive laundry. His myoclonic tremors occur very regularly, on average 25 to 27 days per month. With the tremors come uncontrolled incontinence and large voids. After a myoclonic tremor episode, he is sedated and off his schedule for voiding, which results in more accidents and laundry, especially because he is not on the toilet during those times. He is no longer toilet trained. The appellant's parents explained that due to the bowel and urinary incontinence issues, he has a

mattress cover, two washable mattress pads (they are 36 inches by 36 inches to cover a full sized bed), then a bottom sheet, then two more washable mattress pads, then a top sheet. All of this does not prevent the incontinence issues and the sheets and mattress pads need to be washed with every accident, despite his use of super absorbent briefs. Accidents occur at least one time per day and his sheets and mattress pads are washed daily, sometimes more if there are multiple myoclonic episodes. The appellant's laundry is done separately due to his incontinence. The sheets and mattress pads also require a lot of time to pre-treat stains and odors. Additionally, the appellant has two weighted blankets that need to be handwashed whenever he gets pee on them. In addition to his incontinence, the appellant's whole body sweats when he gets tremors. His tremors continue to get worse and more frequent. He goes through multiple clothing changes per day due to the sweating and incontinence. His parents estimated that they easily spend 90 minutes per day doing his laundry.

The appellant's parents are in their [REDACTED] and they are both exhausted and reaching their physical limits in being able to care for him. The appellant's father has had three different surgeries recently which has limited his physical ability to help, especially with the laundry. He had surgery for cancer, his spine, and his shoulder. He continues to have chronic pain and leg, shoulder (rotator cuff), and spine issues. Each weighted blanket is ten pounds and requires the appellant's mother to make two trips because they are too heavy for her to carry both.

Meal Preparation

The appellant requested 15 minutes per day, 7 days per week for breakfast; 30 minutes per day, 7 days per week for lunch; and 45 minutes per day, 7 days per week for dinner. MassHealth approved the request for breakfast and dinner, but modified the frequency requested for assistance with lunch to 30 minutes per day, 5 days per week. MassHealth stated it made the adjustment because the appellant lives with a legal guardian who is responsible for IADLs such as meal preparation.

The appellant's parents testified that whether or not the appellant goes to his day program, which has been less regularly lately due to his myoclonic tremors, the PCA prepares his lunch every day. The day program does not prepare lunch for the appellant, but it will heat up in the microwave whatever lunch the appellant brings with him. The appellant is lactose intolerant, requires a high fiber diet, and eats separate meals than his parents as a result. His food needs to be prepared and cut up into bite-sized pieces. The PCA also makes Jello for the appellant because it is a good way to get him fluids. The parents help with these tasks regularly but the PCA also does them every day. The appellant has a sleep disorder and his sleep is extremely disrupted, especially with the increase in myoclonic tremors. They explained that most adults with [REDACTED] will sleep on average of four to five hours per day, and not necessarily all at once or during the night. This is the case for the appellant and if the PCAs help with meal preparation, it allows the appellant's parents to help with his other needs or get a much-needed nap. Each year, the

appellant's needs have steadily expanded as the struggles with [REDACTED] [REDACTED] debilitating symptoms become more pronounced with age.

Findings of Fact

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

1. The appellant, who lives with his legal guardian, is an adult male under the age of 65 with a primary diagnosis of [REDACTED] (Testimony and Exhibit 6).
2. On December 21, 2023, MassHealth received a prior authorization request for PCA services requesting 63 hours and 30 minutes per week of PCA assistance for dates of service of January 28, 2024 through January 27, 2025 (Testimony and Exhibit 6).
3. On January 11, 2024, MassHealth modified the request to 60 hours per week (Testimony and Exhibits 1 and 6).
4. On January 25, 2024, the appellant timely appealed the notice (Exhibit 2).
5. At hearing, the parties were able to resolve the disputes related to PCA assistance with other healthcare needs (eating a snack), housekeeping, and shopping (Testimony).
6. MassHealth fully restored the time as requested for other health care needs to 10 minutes, 1 time per day, 7 days per week (Testimony).
7. MassHealth fully restored the time as requested for shopping to 45 minutes per week (Testimony).
8. MassHealth increased the time for housekeeping to 60 minutes per week, which the appellant accepted (Testimony).
9. The appellant seeks time for PCA assistance with laundry as follows: 135 minutes per week.
10. MassHealth modified the request to 90 minutes per week (Testimony and Exhibit 6).
11. The appellant is incontinent of bladder and bowel and has multiple accidents per day, requiring sheets, mattress pads, and weighted blankets to be washed. The weighted blankets, which each weigh 10 pounds, have to be washed by hand. His laundry needs to be pre-treated for stains and odors, which is time consuming. His myoclonic tremors, which have been worsening, result in accidents and being very sweaty, so he goes through multiple clothing changes per day. (Testimony).

12. The appellant's parents help with all his care; however, they are in their [REDACTED] and have some physical limitations, especially when it comes to more physical tasks, such as laundry (Testimony).
13. The appellant seeks time for PCA assistance with meal preparation as follows: 15 minutes per day, 7 days per week for breakfast; 30 minutes per day, 7 days per week for lunch; and 45 minutes per day, 7 days per week for dinner (Testimony and Exhibit 6).
14. MassHealth approved the request as to breakfast and dinner, but modified the frequency requested for assistance with lunch to 30 minutes per day, 5 days per week (Testimony and Exhibit 6).
15. The appellant is lactose intolerant, requires a high fiber diet, and eats separate meals from his parents. His food needs to be cut into bite-sized pieces. He requires lunch every day, even on days he goes to his day program. (Testimony).

Analysis and Conclusions of Law

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 personal care services are prescribed by a physician or a nurse practitioner who is responsible for the oversight of the member's health care.
- (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 personal care agency, requires physical assistance with two or more of the following ADLs as defined in 130 CMR 422.410(A):
 - (a) mobility, including transfers;
 - (b) medications,
 - (c) bathing or grooming;
 - (d) dressing or undressing;
 - (e) range-of-motion exercises;
 - (f) eating; and
 - (g) toileting.
- (4) The Division has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services.

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth will not pay a provider for services that are not medically necessary and may impose sanctions on a provider for providing or prescribing a service or for admitting a member to an inpatient facility where such service or admission is not medically necessary.

A service is “medically necessary” if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) 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. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204

Pursuant to 130 CMR 422.410(A), 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, and grooming skills;
- (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 and bladder needs.

Pursuant to 130 CMR 422.410(B), 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 the Division as being instrumental to the health care of the member.

MassHealth **does not cover** any of the following as part of the PCA program or the transitional living program:

- (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;
- (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;** or

(G) surrogates, as defined in 130 CMR 422.402.

See 130 CMR 422.412 (emphasis added).

MassHealth will consider individual circumstances in determining the number of hours of PCA services that a member needs, but “[w]hen 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.” See 130 CMR 422.410(C) (emphasis added). Family members include spouses, parents, or any legally responsible relative. See 130 CMR 422.402.

The appeal is dismissed as to PCA assistance with other healthcare needs (eating a snack), shopping, and housekeeping because at hearing, parties were able to resolve the disputes. MassHealth fully restored the time as requested for other healthcare needs (eating a snack) to 10 minutes, 1 time per day, 7 days per week and for shopping to 45 minutes per week. Parties agreed to 60 minutes per week for housekeeping.

As to the appellant’s request for PCA assistance with laundry, the appeal is approved. The appellant requested 135 minutes per week for assistance with laundry, but MassHealth only approved 90 minutes per week because the appellant lives with a responsible family member and laundry, as an IADL, is the legal guardian’s responsibility. The regulation requires family members to provide “**routine** laundry” and “household management” assistance. The appellant’s need for laundry services related to his medical conditions far exceeds the laundry services anticipated through “household management” or “routine laundry.” The appellant’s parents testified credibly that the appellant’s medical conditions result in an excessive amount of laundry being generated daily, including bed linens, mattress pads, weighted blankets, multiple clothing changes, and pre-treatment for stain and odor removal every day. Because of his urinary and bowel incontinence, the appellant’s laundry must be done separately from the rest of the household. MassHealth considers individual circumstances in determining the number of hours of PCA services. Not only does the appellant have excessive laundry needs, but the appellant’s parents are getting older and it is physically demanding for them to continue to do all this laundry, especially for his father who has had multiple surgeries and deals with chronic pain. Therefore, the appellant’s medical condition results in the need for laundry assistance in excess of the routine laundry assistance that would be expected for regular household maintenance. For these reasons, the appellant is approved for 135 minutes per week for PCA assistance with laundry, as requested.

As to the appellant’s request for PCA assistance with meal preparation, the appeal is approved. Even though as an IADL, meal preparation is typically the responsibility of the legal guardian, MassHealth approved the time as requested for breakfast and dinner, seven days per week. It is not clear why MassHealth differentiated time for assistance with lunch meal preparation and only approved assistance five days per week and not the requested seven days. The appellant requires lunch every day, even on days he goes to his day program. The appellant eats separate food and

meals from his parents because he is lactose intolerant and requires high fiber diet. His parents help with all aspects of his care, but the appellant's needs are extensive and the PCA does meal preparation every day, which allows his parents to see to his other needs. Due to [REDACTED], the appellant only sleeps four to five hours per day and his parents cannot physically meet all his needs given that schedule, or lack thereof. As stated above, MassHealth considers individual circumstances in determining the number of hours of PCA services. For these reasons, the appellant has shown that additional PCA time is medically necessary and he is approved for 30 minutes per day, 7 days per week for lunch meal preparation, as requested.

For these reasons, the appeal is approved in part and dismissed in part.

Order for MassHealth

Approve 30 minutes per day, 7 days per week for lunch meal preparation; approved 135 minutes per week for laundry; and implement the agreements made at hearing for other healthcare needs (eating a snack), shopping, and housekeeping. All changes should go retroactive to the beginning of the prior authorization period, January 28, 2024.

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.

Alexandra Shube
Hearing Officer
Board of Hearings

cc:

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