

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed-in-part	Appeal Number:	2402612
Decision Date:	05/21/2024	Hearing Date:	04/05/2024
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N., Clinical Reviewer, 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-in-part; Dismissed-in-part	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	05/21/2024	Hearing Date:	04/05/2024
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	██████
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 1/22/24, MassHealth informed Appellant that it was modifying her request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1); Exh. 1, p. 2. Appellant filed a timely appeal on 2/21/24. See Exh. 2. Modification of a request for PCA services is grounds 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/clinical appeals reviewer. Appellant represented herself. Both parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is an adult MassHealth under the age of 65 with a past medical history including cerebral vascular accident (CVA) with left hemiparesis, diabetes mellitus, hypertension, coronary artery stenosis, obesity, and joint pain with a recent diagnosis of rheumatoid arthritis. See Exh. 4, pp. 6-7.

On 12/15/23, Appellant was evaluated by a registered nurse from her Personal Care Management (PCM) agency, Tempus Unlimited, Inc. (“Tempus”) to determine her continued need for personal care attendant (PCA) services. See id. at 5. On 1/3/24, Tempus sent MassHealth a prior authorization (PA) request on Appellant’s behalf seeking 17 hours and 30 minutes per-week of PCA services for dates of service 1/14/24 through 1/13/25. See Exh. 1 and Exh. 4.

On 1/11/24, MassHealth modified Appellant’s PA request by approving 14 hours of PCA services per-week. See Exh. 1. MassHealth approved the time requested for all areas of care except for the instrumental activity of daily living (IADL) of meal preparation and clean-up. Id.

Based on the reevaluation findings, Appellant’s PCM agency requested a total of 80 minutes per-day for PCA assistance with meal preparation and clean-up, broken down as follows: breakfast: 15 minutes; lunch: 25 minutes; and dinner: 40 minutes.¹ See Exh. 4, p. 28. In support of the request, the PCM agency noted that Appellant has a small “galley type kitchen;” that she has decreased abilities to lift and carry due to “right hand/arm issues;” that she holds onto a “quad cane for balance;” has increased back pain and decreased endurance; she is on a low-sodium, diabetic diet; is able to make coffee once the machine is set up, but unable to carry a cup to the table due to inability in using left hand and holding quad cane in right hand; she is dependent for set up; requires maximum assistance with all cooking; and is dependent/requires maximum assistance for clean-up due to her decreased ability to lift, carry, bend, and reach. Id.

The PCM agency indicated that although a legally responsible person, i.e., her husband, lives with Appellant, there are special circumstances that cause her to require IADL assistance from a PCA. See Exh. 4, p. 25. Specifically, the PCM agency noted that Appellant’s husband is a fisherman and is out at sea 10 days and home 2 days, and is not available to meet her IADL needs. Id. at 7.

¹ The PCM agency noted that Appellant could prepare snacks independently and therefore only requested time for preparation and clean-up of the three meals per-day.

The PCM agency also noted that Appellant does not receive any home delivered meals, nor does she attend any programs that provide meals outside the home. Id.

MassHealth modified the request by reducing the time per-day to 70 minutes and weekly frequency to five days. (70x1x5). See id. and Exh. 1. The MassHealth representative explained that under the PCA program, MassHealth expects that a legally responsible family member, such as parent or spouse, living with the consumer will provide assistance with IADLs. Because Appellant lives with her husband, MassHealth reduced the total time and frequency to account for the assistance Appellant's spouse is obligated to provide her when he is not working.

Appellant appeared at hearing and testified that due to her husband's work schedule, he is "never home" and not able to help her with her IADLs. As a fisherman, he is at sea anywhere from 10 to 15 days at a time; and will return home for, at most, 2 to 3 days in between trips. When he is home, he works on the boat. There is not a day he is not working. Appellant testified that she is home "24/7" and without the PCA she has no one available to help her. Because of her physical limitations, she cannot do any substantial meal preparation or clean-up tasks independently. Appellant described that her entire left side of her body does not work. She uses a cane with prongs on the bottom to keep balance. She cannot use a walker with a tray to transport food or drinks because every room in her house has a little step and this prevents her from moving meals room to room. When asked what the PCA does for meal preparation, Appellant explained that for breakfast she will usually make scrambled eggs, prepare fruit, and coffee. Because this alone takes up a lot of the time, the PCA will typically prepare a sandwich for lunch and dinner that Appellant can access when the PCA is not there. Appellant testified that she used to have 22 hours, but her hours were cut such that the PCA cannot perform all necessary tasks in the allotted time.

In response, the MassHealth representative offered to increase the frequency and approve the 7-days as requested; however, stood by the modification to 70 minutes per-day to account for the times her husband can contribute when home.

Appellant indicated that even with the increased frequency, there is still not enough time for the PCA to perform all meal preparation and clean-up tasks that she requires. Appellant testified that even with the limited assistance her husband can provide for meal preparation, she needed at least 80 minutes per-day of PCA assistance for this IADL.

Findings of Fact

1. Appellant is an adult MassHealth under the age of 65 with a past relevant medical history including CVA with left hemiparesis, diabetes mellitus, hypertension, coronary artery stenosis, obesity, and joint pain with a recent diagnosis of rheumatoid arthritis.
2. On 1/3/24, Appellant's PCM agency sent MassHealth a PA request seeking 17 hours and

30 minutes per-week of PCA services for dates of service 1/14/24 through 1/13/25.

3. On 1/11/24, MassHealth modified Appellant's PA request by approving 14 hours of PCA services per-week.
4. MassHealth approved the time requested for all areas of care except for the IADL of meal preparation.
5. Appellant's PCM agency requested a total of 80 minutes per-day for PCA assistance with meal preparation (80x1x7) of breakfast, lunch, and dinner.
6. MassHealth modified the request by adjusting down the time to 70 minutes per-day and frequency to five days per-week (70x1x5).
7. Appellant is dependent for meal preparation set up; requires maximum assistance with all cooking; and is dependent/requires maximum assistance for clean-up due to her decreased ability to lift, carry, bend, and reach.
8. Appellant has decreased ability and carry due to right hand/arm issues; she is unable to use her left hand/arm and requires holding a quad cane for balance in her right hand.
9. Appellant does not receive home delivered meals, nor does she attend any programs that provide meals outside the home.
10. Although Appellant's husband lives with her, he is a fisherman and is at sea for 10 to 15 days at a time with brief returns home for up to 2-3 days before he leaves again; when home, her husband has to leave the house to work on the boat.
11. Appellant's husband is not available to meet her IADL needs.
12. Appellant is on a special low-sodium diabetic diet.
13. Factoring the brief times Appellant's husband can assist with meal preparation, it takes Appellant's PCA at least 80 minutes per-day 7 days per week to assist with all meal preparation and clean-up tasks.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, subject to the following conditions: First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least

two] ADLs ... without physical assistance.” See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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).

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 PCA services by denying the time requested for assistance with meal preparation.

Under MassHealth PCA regulations, “meal preparation and clean-up” is considered an instrumental activity of daily living (IADL). 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).

MassHealth regulations set forth the following considerations that a PCM agency must make when submitting requests for PCA assistance with IADL care:

(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 member² 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) 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).

Finally, MassHealth covers the “activity time performed by a PCA in providing assistance with the [ADL or IADL].” 130 CMR 422.411(A). It 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 combined total of 80 minutes-per day for PCA assistance with meal preparation and clean-up of her breakfast, lunch, and dinner. See Exh. 4, p. 28. Relying primarily on § 422.410(C)(1), above, MassHealth modified the request to 70 minutes per-day, 5-days per-week (70x1x5) to account for the time that Appellant’s husband is home and capable of assisting in meal preparation and clean-up tasks See Exh. 1. At hearing, MassHealth agreed to restore the requested frequency to 7 days per-week; however, Appellant still disputed the reduction in time from 80 minutes to 70 minutes per-day.

In reviewing the evidence, Appellant successfully demonstrated that even accounting for the limited time her husband is home to assist with IADLs, she still requires 80 minutes of PCA assistance every day for meal preparation and clean-up. According to the PCM nurse’s evaluation, Appellant requires maximum assistance with meal preparation and clean-up. Appellant credibly testified that even when her husband is home, he still works on the boat and cannot reliably assist with her meals, which include a low-sodium diabetic diet. Additionally, there is nothing to suggest that the PCM agency’s request did not already account for the limited assistance her husband provides when home, when determining the appropriate amount of time to request under 130 CMR 422.412(C)(1) above. The PCM agency specifically documented the ratio of time Appellant’s husband spent away from, and in, the home, further noting that this was a “special circumstance” resulting in Appellant’s need for IADL assistance from a PCA. See Exh. 4, pp. 6, 25. In consideration of Appellant’s “individual circumstances,” 80

² Under MassHealth PCA regulations, a “Family Member” is defined as “the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.”

minutes per-day (80x1x7) of PCA assistance with meal preparation and clean-up tasks is necessary to meet her care needs. See 130 CMR 422.410(C)(3).

Based on the foregoing, the appeal is APPROVED insofar as Appellant successfully demonstrated she requires the full 80 minutes per-day for assistance with meal preparation and clean-up. The appeal is DISMISSED insofar as MassHealth agreed to adjust the weekly frequency of meal preparation from 5-days to 7-days per-week.

Order for MassHealth

Rescind notice dated 1/11/24. Approve Appellant's prior authorization request in full for dates of service 1/14/24 through 1/13/25.

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