

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed in Part; Approved in Part	Appeal Number:	2403715
Decision Date:	4/24/2024	Hearing Date:	04/11/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen



*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
Decision Date:	4/24/2024	Hearing Date:	04/11/2024
MassHealth's Rep.:	Kelly Rayen	Appellant's Rep.:	Surrogate
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 February 14, 2024, MassHealth modified the appellant's prior authorization request for personal care services effective February 23, 2024. (130 CMR 422.000; Exhibit 1). The appellant filed this appeal in a timely manner on March 11, 2024. (130 CMR 610.015(B); Exhibit 2). 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. (130 CMR 422.000).

Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for personal care services.

Summary of Evidence

The appellant is under the age of 65 and had a cerebrovascular accident (stroke) leaving him with left sided hemiplegia (paralysis). The appellant cannot see from the left eye, hear on the left side and has difficulty swallowing. The appellant has hypertension, gastroesophageal reflux disease (GERD), osteoporosis, diabetes and depression.

On January 26, 2024, the appellant underwent a re-evaluation for Personal Care Attendant (PCA) services. The appellant requested 64.5 day/evening hours each week. MassHealth modified this request and approved 59.5 day/evening hours each week. Dates of service are February 23, 2024 to February 22, 2025. MassHealth modified the time requested for assistance with bladder care and meal preparation. Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for bladder care (13 minutes, 9 times each day, 7 days each week). The parties agreed that the only issue remaining was the time for assistance with meal preparation.

The appellant requested 80 minutes each day for assistance with meal preparation. MassHealth modified this request and approved 75 minutes each day for assistance with meal preparation. The appellant has 3 small meals and 2 snacks each day. The MassHealth representative testified that the time requested was longer than what is ordinarily required, and the appellant was approved for 75 minutes each day in the past.

The appellant's representative testified that while they did not agree with the 75 minutes approved last year, they did not understand that the appellant had the opportunity to appeal the agency's modifications. The appellant's representative testified that the appellant has dietary restrictions and difficulty swallowing. Most foods are processed or cut up into very small pieces to prevent choking and the appellant eats several small meals each day due to dietary restrictions and other conditions. The appellant's representative testified that the appellant cannot participate in meal preparation at all.

Findings of Fact

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

1. The appellant is under the age of 65 and had a cerebrovascular accident (stroke) leaving him with left sided hemiplegia (paralysis).
2. The appellant cannot see from the left eye, hear on the left side and has difficulty swallowing.
3. The appellant has hypertension, gastroesophageal reflux disease (GERD), osteoporosis, diabetes and depression.

4. On January 26, 2024, the appellant underwent a re-evaluation for Personal Care Attendant (PCA) services.
5. The appellant requested 64.5 day/evening hours each week.
6. MassHealth approved 59.5 day/evening hours each week.
7. Dates of service are February 23, 2024 to February 22, 2025.
8. MassHealth modified the time requested for bladder care and meal preparation.
9. At hearing, MassHealth restored the time requested for bladder care (13 minutes, 9 times each day, 7 days each week).
10. The appellant requested 80 minutes each day for assistance with meal preparation.
11. MassHealth approved 75 minutes each day for assistance with meal preparation.
12. The appellant has 3 small meals and 2 snacks each day.
13. The appellant was approved for 75 minutes each day in the past.
14. The appellant has dietary restrictions.
15. The appellant has trouble swallowing.
16. Most foods are processed or cut into small pieces to prevent choking.

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 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/grooming;
 - d. dressing or undressing;
 - e. range-of-motion exercises;
 - f. eating; and
 - g. toileting.
- (4) The MassHealth agency has determined that the PCA services are medically necessary and has granted a prior authorization for PCA services. (130 CMR 422.403(C)).

The appellant meets the conditions to receive such 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 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. (130 CMR 450.204(A)). Medically necessary services must be substantiated by records including evidence of such medical necessity and quality. (130 CMR 450.204(B)). A provider must make those records available to MassHealth upon request. (130 CMR 450.204(B)).

Upon hearing testimony and reviewing evidence at hearing, MassHealth restored the time requested for assistance with bladder care (13 minutes, 9 times each day, 7 days each week). As MassHealth agreed to approve the time requested for assistance with bladder care, this 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 meal preparation and housekeeping. (130 CMR 422.401(B)(1)).

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 appellant clearly presented evidence of individual circumstances including diagnoses of diabetes, GERD and left sided hemiplegia to demonstrate that the time requested for assistance with meal preparation was appropriate. The decision made by MassHealth was not correct. This part of the appeal is approved.

This appeal is dismissed in part and approved in part.

Order for MassHealth

Approve the time requested for bladder care and meal preparation as of February 23, 2024.

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