

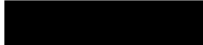
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed-in-part	Appeal Number:	2404401
Decision Date:	5/6/2024	Hearing Date:	04/22/2024
Hearing Officer:	Casey Groff, Esq.		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, 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:	5/6/2024	Hearing Date:	04/22/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	Son
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 3/8/2024, MassHealth informed Appellant that it modified his prior authorization (PA) request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant filed a timely appeal 3/21/24. See 130 CMR 610.015(B); Exhibit 2. Modification of a PA request for services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's PA request for personal care attendant services.

Issue

The issue on appeal 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 was represented by his son. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth RN representative presented the following information: Appellant is over the age of ■ and has primary diagnoses of osteoarthritis with chronic pain, as well as diagnoses of angina, depression, dementia, and thyroid issues. See Exh. 4, p. at 7-8. On 2/28/24, MassHealth received a PA request from Appellant's personal care management (PCM) agency, Tempus Unlimited, Inc., seeking approval for 48 hours and 45 minutes per-week of personal care attendant (PCA) services for dates of service 3/8/2024 through 3/7/2025. See id. at 4. The request was made pursuant to a re-evaluation the PCM agency conducted on 2/20/24. See id.

Through a letter dated, 3/8/2024, MassHealth notified Appellant that it modified his PA request by authorizing a total of 41 hours and 15 minutes of PCA services per week. See id. at 3-4. Specifically, MassHealth modified the PA request by adjusting downward the time authorized for the following activities of daily living (ADLs) and Instrumental Activities of daily living (IADLs): (1) transfers, (2) eating, (3), bladder care, (4) meal preparation, (5) laundry, and (6) shopping. Id.

Resolved / Accepted Modifications:

Transfers, Eating, Bladder Care

MassHealth testified that it modified three of the ADLs – transfers, eating, and bladder care, only with respect to two days per-week that Appellant attended an adult day health (ADH) program. On these days, MassHealth reduced the frequency of episodes to account for the ADL care Appellant received through his ADH provider. Otherwise, MassHealth approved the time per-episode, and frequency of episodes on non-ADH days, as requested.¹ At hearing, Appellant's representative testified that he did not dispute the modifications with respect to these three ADLs.

¹ Appellant's PCM agency requested transfers at 2x6x7; eating at 10x3x7; and bladder care at 10x6x7. See Exh 4 at 11-20. MassHealth modified the request because MassHealth will not reimburse for PCA services if such services are already available at no cost to the member pursuant to MassHealth regulations 130 CMR §§ 450.204(A)(2), 517.008 (B)(2), and 503.007(B). To account for the two days Appellant received ADL assistance through his ADH provider, MassHealth adjusted downward the daily frequency of ADL episodes as follows: (1) transfers at 2x6x5 and 2x4x2; (2) eating at 10x3x5 and 10x2x5; and (3) bladder care at 10x6x5 and 10x4x2. See id. at 4.

Bowel-Care

Appellant's representative did, however, contest the omission of time for bowel-care under the ADL category of "toileting." Specifically, Appellant requested bowel-care at 12x1x7, i.e., 84 minutes per-week. See id. at 20. While not specifically identified as a modification, Appellant noted that MassHealth approved 380 minutes per-week for "toileting," consisting only of the time approved for "bladder-care." The MassHealth representative testified that bowel-care should have been approved and that the omission was likely due to a clerical error computing time. The MassHealth representative confirmed that the error would be corrected such that the 84-minutes per-week of bowel-care assistance would be reflected in the overall approved PCA time for "toileting."

Shopping

Appellant's PCM agency requested 60 minutes per-week (60x1) for assistance with the IADL of "shopping." Id. at 30-31. MassHealth modified the request, authorizing 45 minutes per-week (45x1) noting that Appellant's wife, who also receives PCA services, is authorized for 45 minutes of shopping. Id. Appellant testified that he did not dispute this modification.

Laundry

Appellant's PCM agency requested 60 minutes of assistance with "laundry" per-week (60x1). Id. at 30. MassHealth modified the request by approving 30 minutes per-week (30x1), again citing, as a basis for its determination, that Appellant's wife receives PCA services and is has approved time for laundry. Appellant testified that it still takes longer than 30 minutes for Appellant's PCA to do solely Appellant's laundry. In response, MassHealth offered to increase the time to 45 minutes per week (45x1). Appellant's representative accepted, thereby resolving the modification to "laundry."

Meal Preparation:

Appellant's PCM agency requested a total of 80 minutes per-day for assistance with meal preparation (80x1x7), broken down as 15 minutes for breakfast, 20 minutes for lunch, 35 minutes for dinner, and 10 minutes for snack. See id., p. 29-30. In support of its request, the PCM agency noted that Appellant requires "total dependence" for all meal preparation tasks; that he lives with his "medically involved wife who is currently hospitalized since [REDACTED];" that his diet is completely different from his wife, who has severe allergies; that Appellant is on a "minced and mashed level 5 diet;" and that Appellant's ADH provider will not prepare his meals due to his dietary restrictions. Id.

MassHealth modified the request by approving 45 minutes per-day (45x1x7) for meal preparation. See id. at 4, 30. The MassHealth representative testified that it modified the request because,

Appellant's wife is also a PCA consumer, and MassHealth requires that when a member is living with another PCA service recipient, time for homemaking tasks such as meal preparation must be calculated on a shared basis under 130 CMR 422.410(C). MassHealth testified that Appellant's wife currently is approved to receive 150 minutes per-week for PCA meal preparation assistance; and that if Appellant's request were approved, they would have a combined 700 minutes for PCA meal preparation service per-week. The maximum combined time allowed per MassHealth guidelines is 630 minutes per week. Therefore, MassHealth modified Appellant's request to 45 minutes per-day or 315 minutes per-week.

In response, Appellant's representative testified that Appellant and his wife are on two separate diets based on their individual medical conditions. Appellant is at risk for diabetes, and he is allergic to food which his wife is suggested to eat. He has an allergy to peanut butter, mushrooms, and is lactose intolerant. Their meals must be prepared separately to avoid cross contamination. Appellant requires a diet high in fiber, whereas his wife has been hospitalized for colitis and diverticulitis and has to minimize fiber intake. Furthermore, Appellant requires a soft food diet. In advance of the hearing, Appellant submitted a copy of the "Level 5 Minced & Moist Food for Adults" fact sheet, which Appellant, according to his representative, is medically advised to follow. Meal preparation often consists of gathering the food and ingredients, cooking or boiling the food, and then mincing or pureeing the food so that it can be safely and effectively consumed. Because this involves multiple steps and the use of utensils and cookware, the clean-up process takes longer than ordinary. Neither Appellant nor his wife are able to contribute to any aspect of meal preparation or clean up, and they rely entirely on their PCA to perform all tasks. Appellant testified that the time requested consists not of any time waiting for food to cook, but that it reflects the total time it takes the PCA to actively prepare and clean up for meals. Appellant's representative indicated that meals and diet have a significant impact on Appellant's health, and he did not want the PCA to rush through the process.

In support thereof, Appellant submitted two letters from his primary care provider (PCP), [REDACTED] M.D. In the letters, [REDACTED] wrote that Appellant has "a very complex medical history," including coronary artery disease, severe aortic stenosis, Barrett's esophagitis, chronic bronchitis, bradycardia, colon cancer, thyroid cancer, peripheral neuropathy, anxiety disorder, rapidly progressing dementia, and weight loss. See Exh. 5, p. 3. The letter further states that Appellant and his wife "have different medical issues and [are] on a special diet that needs to be prepared separately by their PCA;" that they are both unstable in their condition; that Appellant's requires a high fiber diet; and that "good nutritional support is very important for both of them which prevents further deterioration of their diseases..." See id. at 2-3. ²

² Appellant's representative noted that Appellant's wife has since been hospitalized for several months due to a severe case of colitis and diverticulitis. She now requires further modifications to her diet, resulting in more differences in her and Appellant's meal preparation processes.

Findings of Fact

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

1. Appellant is over the age of [REDACTED] and has primary diagnoses of osteoarthritis with chronic pain and a relevant past medical history involving: angina, depression, coronary artery disease, severe aortic stenosis, Barrett's esophagitis, chronic bronchitis, bradycardia, colon cancer, thyroid cancer, peripheral neuropathy, anxiety, rapidly progressing dementia, and weight loss. (Testimony; Exh. 4, pp. 6-7; Exh. 5).
2. Appellant lives with his wife, who also has complex medical issues and receives PCA services. (Testimony; Exh. 4, Exh. 5).
3. On 2/28/24, MassHealth received a PA request from Appellant's PCM agency, Tempus Unlimited, Inc., seeking approval for 48 hours and 45 minutes per-week of PCA services for dates of service 3/8/2024 through 3/7/2025. (Testimony; Exh. 4, pp. 7-8).
4. Through a letter dated 3/8/2024, MassHealth notified Appellant that it modified his PA request by authorizing 41 hours and 15 minutes of PCA services per-week; based on adjusting downward the times authorized for the following ADLs and IADLs (1) transfers, (2) eating, (3), bladder care, (4) meal preparation, (5) laundry, and (6) shopping. (Testimony; Exh. 1).
5. Appellant did not dispute the modifications to transfers, eating, bladder care, or shopping. (Testimony).
6. At hearing, MassHealth agreed with Appellant that the total authorized PCA time did not include the time requested, and approved for, bowel care at 12x1x7; and that MassHealth would adjust the total authorized time to accurately reflect bowel-care at 12x1x7 as requested. (Testimony; Exh. 4, p. 20).
7. Appellant's PCM agency requested 60 minutes of assistance with "laundry" per-week (60x1). (Exh. 4, p. 30).
8. MassHealth modified the request to laundry by approving 30 minutes per-week (30x1). (Testimony; Exh. 1).
9. At hearing, MassHealth offered to increase the authorized time for laundry to 45 minutes per-week (45x1), and Appellant agreed, thereby resolving the modification to "laundry." (Testimony).

10. Appellant's PCM agency requested a total of 80 minutes per-day for assistance with meal preparation (80x1x7), broken down as 15 minutes for breakfast, 20 minutes for lunch, 35 minutes for dinner, and 10 minutes for snack. (Exh. 4, p. 29-30).
11. MassHealth modified the request by approving a total of 45 minutes per-day (45x1x7) for meal preparation. (Testimony; Exh. 1).
12. Appellant's wife is approved to receive 150 minutes per-week for PCA meal preparation assistance. (Testimony).
13. Appellant requires "total dependence" for all meal preparation tasks. (Testimony; Exh. 4, p. 29).
14. Appellant and his wife require separate diets based on their individual medical conditions, and meals must be prepared separately from one another due to respective allergies. (Testimony; Exh. 4; Exh. 5).
15. Appellant submitted a letter from his PCP stating that Appellant and his wife "have different medical issues and [are] on a special diet that needs to be prepared separately by their PCA;" that they are both unstable in their condition; that Appellant's requires a high fiber diet; and that "good nutritional support is very important for both of them which prevents further deterioration of their diseases..." (Exh. 5, pp. 2-3).
16. Appellant's ADH provider will not prepare meals for Appellant due to his dietary restrictions and therefore the PCA must prepare all of Appellant's meals. (Testimony; Exh. 4, p. 29).
17. Appellant has been advised by his doctors to follow a "Level 5 Minced & Moist Food for Adults," which involves a process that makes both preparation and clean-up take longer than ordinary. (Testimony; Exh. 4, Exh. 5).

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, so long as the following conditions are met:³ 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]

³ PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

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 allotted sufficient time for Appellant to receive assistance with meal preparation to meet his care needs.

Under its regulations, MassHealth considers meal preparation and clean-up to be instrumental activities 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).

When determining the amount of physical assistance required to perform an IADL, MassHealth considers the following circumstances:

- (1) When a member is living with family members, the family member 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).

For all categories of PCA care, including both ADLs and IADLs, MassHealth will approve, and reimburse for, the “activity time performed by a PCA in providing assistance with the [ADL or IADL].” 130 CMR 422.411(A). MassHealth 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 80 minutes-per day (80x1x7) for PCA assistance with meal preparation and clean-up. See Exh. 4 p. 29-30. MassHealth modified the request by approving 45 minutes per day (45x1x7). The modification was based, in part, on 130 CMR § 422.410(C)(2), above, to account for the approved PCA meal preparation time Appellant’s wife receives. Appellant disputed the modification, asserting that 45 minutes per-day is insufficient for the the PCA to perform the necessary meal preparation and clean-up tasks that he requires. Through testimony and documentary submissions, including the PCM nursing evaluation and a letter from Appellant’s PCP, the evidence shows that Appellant and his wife are on separate diets based on their individual medical conditions; their meals must be prepared separately due to conflicting allergies and individual dietary restrictions; and that Appellant is on a soft food diet, which requires additional time to ensure food is prepared at an appropriate consistency. Because both Appellant and his wife are dependent for IADL tasks, they cannot participate in meal preparation or clean-up. As Appellant’s meal preparation tasks are *not* performed on a shared basis with his wife, he should not be subject to a reduction in time under § 422.410(C)(2), above. In considering Appellant’s “individual circumstances,” 80 minutes per-day of PCA assistance with meal-preparation and clean-up tasks is appropriate and necessary to meet his care needs. See 130 CMR 422.410(C)(3).

The appeal is APPROVED with respect to meal preparation.

The appeal is DISMISSED-in-part with respect to transfers, eating, bladder care, and shopping, as Appellant did not contest these modifications.

The appeal is DISMISSED-in-part with respect to bowel care, as MassHealth confirmed at hearing that the request of 12x1x7, which was approved, was mistakenly omitted from the total time authorized for “toileting;” and that MassHealth would correct the error to ensure bowel care was approved and included in the total PCA hours.

The appeal is DISMISSED-in-part with respect to “laundry” as MassHealth offered, and Appellant accepted, an increase in authorized PCA time from 30 minutes to 45 minutes per-week (45x1).

Order for MassHealth

For the PA period for dates of service 3/8/2024 through 3/7/2025: (1) approve Appellant's request in-full for meal preparation and clean-up at 80x1x7; (2) adjust laundry to 45 minutes per-week (45x1) as agreed to at the hearing; and (3) confirm total authorized PCA hours include time requested and approved for bowel care at 12x1x7. Notify Appellant of updated authorized PCA hours accordingly.

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