

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part; Dismissed in Part	Appeal Number:	2410443
Decision Date:	09/06/2024	Hearing Date:	08/05/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN, for Optum

Interpreter:



*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; Denied in Part; Dismissed in Part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	09/06/2024	Hearing Date:	08/05/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
Hearing Location:	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 June 24, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.10(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on July 5, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's assistance is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services.

Issue

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

Summary of Evidence

The appellant is a minor child MassHealth member and represented at hearing by his father, who was assisted by a Spanish-speaking interpreter. MassHealth was represented by a clinical nurse reviewer for Optum, which manages MassHealth's PCA program. All parties appeared at the hearing by telephone. The following is a summary of the testimony and evidence presented at hearing:

The appellant suffers from a primary diagnosis of autism spectrum disorder, and secondary diagnoses of reduced kidney function with nephrology, blindness, developmental delays, and behavioral issues. Prior to this request, the appellant received 32 hours and 15 minutes of PCA services for school weeks, and 35 hours and 15 minutes of services for vacation weeks through MassHealth. On June 17, 2024, MassHealth received a prior authorization request on the appellant's behalf for renewal of services requesting 39 hours and 45 minutes of weekly PCA services for 38.14 school weeks, and 45 hours and 15 minutes for 14 vacation weeks. On June 24, 2024, MassHealth modified the request and approved the appellant for 32 hours and 30 minutes of weekly services for school weeks and 35 hours and 45 minutes for 14 vacation weeks with dates of service from June 24, 2024, to June 23, 2025.

Modifications were made in the areas of mobility, eating, bowel care, meal preparation, laundry, and housekeeping. After hearing, the parties agreed to the following modifications:

- **Eating:** parties agree to 15 minutes, 3 times per day, 5 days per week and 15 minutes, 4 times per day, 2 days per week for school weeks and 15 minutes 4 times per day, 7 days per week for vacation weeks; For fluid intake, the parties agree to 4 minutes, 2 times per day, 7 days per week;
- **Housekeeping:** approved for 15 minutes per week.

Thus, after hearing, disputes remained over assistance with mobility, bowel care, meal preparation, and laundry.

Mobility

The appellant requested 8 minutes, 3 times per day, 7 days per week for assistance with mobility during school weeks and 8 minutes, 4 times per day, 7 days per week during vacation weeks. The MassHealth representative reported that this was modified from 8 minutes per instance to 1, because the requested time is longer than typically required for someone with the appellant's needs. She testified that the documentation indicates that the appellant tends to resist ambulation, and that dealing with resistance behaviors sound more like guiding or coaching. The 1 minute per instance that was approved is based on hands-on assistance with ambulation. The appellant's father reported that, due to the appellant's blindness and behavioral issues, he does require hands on assistance to be able to move safely from room to room without hitting himself

on walls or tripping over obstacles. He reported that it can take 30 minutes to get him downstairs in the morning, because the appellant does not always want to move. The MassHealth representative offered to increase the approved amount per instance from 1 minute to 5 minutes. The appellant's father rejected that offer and asked that the matter be taken under advisement.

Bowel Care

The appellant requested 15 minutes, 1 time per day, 5 days per week and 15 minutes, 2 times per day, 2 days per week for assistance with bowel care during school weeks, and 15 minutes, 2 times per day, 7 days per week during vacation weeks. The MassHealth representative reported that this was modified from 15 minutes to 10 minutes per instance, because the requested time is longer than typically required for someone with the appellant's needs. The appellant's father reported that the appellant wears diapers that he and the PCA must change. The appellant frequently resists those changes, which makes the task more difficult, and he often has to be cleaned in the shower to properly clean up the mess. He reported that it takes a bit longer than 10 minutes to change the appellant after a bowel movement. The MassHealth representative offered to increase the approved amount per instance from 10 minutes to 12 minutes. The appellant's father rejected that offer and asked that the matter be taken under advisement.

Meal Preparation

The appellant requested 20 minutes, five days per week for assistance with meal preparation. The MassHealth representative reported that this was not approved, because the parent is legally responsible to provide child consumers with assistance with Instrumental Activities of Daily Living (IADLs) unless they are physically incapable of doing so or there is some other extenuating circumstance. The appellant's representative reported that this request is for the appellant's lunch that he brings to school. The father leaves for work at the same time that the appellant leaves for school. He did not provide a reason as to why he is unable to prepare the appellant's lunches himself.

Laundry

The appellant requested 60 minutes per week for assistance with laundry. The MassHealth representative reported that this was modified to 30 minutes per week, because although the parent is legally responsible for this task, MassHealth increased the amount of PCA assistance due to the appellant's incontinence. The appellant's father reported that laundry is done for the appellant every day, sometimes as many as five loads, because the appellant is often covered in urine and feces. The MassHealth representative offered to increase the approved amount per week from 30 minutes to 45 minutes. The appellant's father rejected that offer and asked that the matter be taken under advisement.

Findings of Fact

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

1. The appellant is a minor MassHealth member who suffers from a primary diagnosis of autism spectrum disorder, and secondary diagnoses of reduced kidney function with nephrology, blindness, developmental delays, and behavioral issues. Exhibit 4, Exhibit 5 at 7-8. Prior to the notice at issue, he received 32 hours and 15 minutes of PCA services for school weeks, and 35 hours and 15 minutes of services for vacation weeks through MassHealth. Testimony.
2. On June 17, 2024, MassHealth received a prior authorization request on the appellant's behalf for renewal of services requesting 39 hours and 45 minutes of weekly PCA services for 38.14 school weeks, and 45 hours and 15 minutes for 14 vacation weeks. Testimony, Exhibit 5 at 35. On June 24, 2024, MassHealth modified the request and approved the appellant for 32 hours and 30 minutes of weekly services for school weeks and 35 hours and 45 minutes for 14 vacation weeks with dates of service from June 24, 2024, to June 23, 2025. Testimony, Exhibit 1.
3. The specific modifications were made in the areas of mobility, eating, bowel care, meal preparation, laundry, and housekeeping. Exhibit 1.
4. After hearing testimony, MassHealth and the appellant agreed to the following hours:
 - **Eating:** parties agree to 15 minutes, 3 times per day, 5 days per week and 15 minutes, 4 times per day, 2 days per week for school weeks and 15 minutes 4 times per day, 7 days per week for vacation weeks; For fluid intake, the parties agree to 4 minutes, 2 times per day, 7 days per week;
 - **Housekeeping:** approved for 15 minutes per week.

Testimony.

5. The appellant requested 8 minutes, 3 times per day, 7 days per week for assistance with mobility during school weeks and 8 minutes, 4 times per day, 7 days per week during vacation weeks. MassHealth modified this request to 1 minute per instance. Exhibit 5 at 12 and 43, Testimony.
6. The appellant requested 15 minutes, 1 time per day, 5 days per week and 15 minutes, 2 times per day, 2 days per week for assistance with bowel care during school weeks, and 15 minutes, 2 times per day, 7 days per week during vacation weeks. MassHealth modified this request to 10 minutes per instance. Exhibit 5 at 21 and 52, Testimony.
7. The appellant requested 15 minutes per day, five days per week for assistance with meal preparation for his lunches and snacks for school. MassHealth denied this request. Exhibit 5 at 30,

Testimony.

8. The appellant requested 60 minutes per week for assistance with laundry. MassHealth modified this request to 30 minutes per week. Exhibit 5 at 31 and 62, Testimony.

9. The modifications for mobility and bowel care were made because the requested time is more than is typically approved for someone with the appellant's needs. Exhibit 1, Testimony. The modifications for meal preparation and laundry were made because they are tasks that are expected to be completed by a parent, but the appellant's increased incontinence warrants some PCA assistance with laundry. Exhibit 1, Testimony.

10. The appellant can ambulate from room to room on his own but requires someone to physically guide him given his blindness and behavioral issues. Testimony. MassHealth agreed to increase the amount of assistance with mobility to 5 minutes per instance. Testimony.

11. The appellant wears diapers and is unable to change or clean himself after a bowel movement. It takes slightly more than 10 minutes to assist the appellant with bowel care. Testimony. MassHealth agreed to increase the amount of assistance with bowel care to 12 minutes per instance. Testimony.

12. There is no evidence that the appellant requires a special diet. The appellant's father is physically capable of preparing his lunch every day. Testimony.

13. The appellant requires some extra assistance with laundry due to his incontinence. Testimony.

Analysis and Conclusions of Law

MassHealth requires providers to obtain prior authorization before administering certain medical services. 130 CMR 450.303 and 130 CMR 420.410. PCA services fall into this category, and the regulations governing prior authorization for such services are found at 130 CMR 422 et seq. MassHealth will authorize coverage of PCA services when:

- (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 [Activities of Daily Living (ADLs)] and [Instrumental Activities of Daily Living (IADLs)] without physical assistance.¹

¹ ADLs include assistance with mobility, medications, bathing or grooming, dressing or undressing, passive range of motion, and toileting, while IADLs include household services (such

- (3) The member, as determined by the PCM agency, requires physical assistance with two or more of the ADLs as defined in 130 CMR 422.410(A).
- (4) The MassHealth agency has determined that the PCA services are medically necessary.

130 CMR 422.403 (C). It is undisputed that the appellant is a MassHealth member eligible to receive PCA services. However, in addition to meeting those categorical criteria, all PCA services must be medically necessary for prior authorization to be approved. A service is determined to be 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...

...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(A)-(B).

As part of the PCA program, MassHealth does not cover certain activities, including, but not limited to “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members.” 130 CMR 422.412(C) and (F). Such services include “[w]hen a member is living with family members, the family members will provide assistance with most IADLs...[including] routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member.” 130 CMR 422.410(C)(1). However, MassHealth “will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.” *Id.* at 422.410(C)(3).

In this case, as the MassHealth representative and the appellant agreed as to the approved hours for eating and housekeeping, the appeal with respect to those tasks has resolved and is hereby

as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

dismissed in part. MassHealth is ordered to modify the appellant's approved hours to include the following:

- **Eating:** parties agree to 15 minutes, 3 times per day, 5 days per week and 15 minutes, 4 times per day, 2 days per week for school weeks and 15 minutes 4 times per day, 7 days per week for vacation weeks; For fluid intake, the parties agree to 4 minutes, 2 times per day, 7 days per week;
- **Housekeeping:** approved for 15 minutes per week.

Thus, at issue in this case is whether the appellant met his burden of proof in establishing medical necessity for more approved PCA time than MassHealth approved for assistance with mobility, bowel care, meal preparation, and laundry.

Mobility

The definition for mobility can be found at 130 CMR 422.410(A)(1) and involves "physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment." In this case, the appellant's father testified that, due to the appellant's blindness, he does require physical assistance with getting from room to room without injuring himself. However, I do not credit the testimony that it can take 30 minutes for the appellant to ambulate downstairs every morning. MassHealth's offer of 5 minutes per instance for an able-bodied person whose physical hands-on needs only involve guiding him to ensure he does not walk into anything is more than reasonable. MassHealth will not cover time that it takes for coaching, cueing, or supervising, such as instances where the appellant is defiant and refusing to move. As such, the appellant did not provide evidence that he requires eight minutes of assistance for mobility. I impose MassHealth's offer of 5 minutes, 3 times per day, 7 days per week for assistance with mobility during school weeks and 5 minutes, 4 times per day, 7 days per week during vacation weeks. The appeal with respect to mobility is therefore approved in part and denied in part.

Bowel Care

MassHealth offered to increase the amount of assistance with bowel care from 10 minutes per instance, to 12 minutes per instance. The appellant's father testified that it takes "slightly more than 10 minutes" to change the appellant's diaper and clean him after a bowel movement, but was unable to provide a more specific time estimate. Therefore, there is no evidence that MassHealth's offer of 12 minutes cannot satisfactorily meet the appellant's needs, nor that the appellant is otherwise entitled to 15 minutes of assistance with bowel care. I thereby impose MassHealth's offer of 12 minutes, 1 time per day, 5 days per week and 12 minutes, 2 times per day, 2 days per week for assistance with bowel care during school weeks, and 12 minutes, 2 times per day, 7 days per week during vacation weeks. The appeal with respect to bowel care is approved in part and denied in part.

Meal Preparation

MassHealth reported that the appellant was not approved for assistance with meal preparation because this is an IADL whose responsibility falls on a parent unless there are extenuating circumstances. In this case, the appellant's father provided no evidence that he is incapable of preparing the appellant's lunches every day before they leave for work and school, nor is there any evidence that the appellant requires a special kind of diet that involves separate and substantive meal preparation. There are, thus, no extenuating circumstances that would allow approval of PCA assistance for the appellant's meal preparation for lunch during school weeks. The appeal with respect to assistance with meal preparation is therefore denied.

Laundry

MassHealth reported that the appellant was approved only for some assistance with laundry because, despite the task being a parental responsibility, the appellant's incontinence is an extenuating circumstance warranting approval for some assistance. The MassHealth representative offered to increase that assistance to 45 minutes per week at hearing. It is difficult to credit the father's testimony that the appellant is frequently covered in excrement necessitating over five loads of laundry per day. Especially given that the approved time covers only hands on assistance with loading, folding, and putting away clothes, 45 minutes is a reasonable and sufficient amount of time to ensure that the appellant's laundry needs are met throughout the week. I thereby impose MassHealth's offer of 45 minutes per week for PCA assistance with laundry. The appeal with respect to laundry is approved in part and denied in part.

For the foregoing reasons, the appeal is dismissed with respect to eating and housekeeping. With respect to mobility, bowel care, and laundry, the appeal is hereby approved in part and denied in part. With respect to assistance with meal preparation, the appeal is hereby denied.

Order for MassHealth

Modify the appellant's approved PCA hours to include the following assistance, retroactive to June 24, 2024:

- **Mobility:** 5 minutes, 3 times per day, 7 days per week during school weeks and 5 minutes, 4 times per day, 7 days per week during vacation weeks
- **Eating:** 15 minutes, 3 times per day, 5 days per week and 15 minutes, 4 times per day, 2 days per week for school weeks and 15 minutes 4 times per day, 7 days per week for vacation weeks; For fluid intake, 4 minutes, 2 times per day, 7 days per week;
- **Laundry:** 45 minutes per week;
- **Housekeeping:** 15 minutes per week.

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.

Mariah Burns
Hearing Officer
Board of Hearings

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