

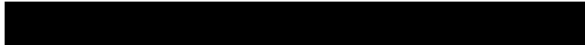
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2410923
Decision Date:	10/04/2024	Hearing Date:	08/20/2024
Hearing Officer:	Marc Tonaszuck		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN, 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:	Denied	Issue:	Prior Authorization Personal Care Attendant (PCA) Services
Decision Date:	10/04/2024	Hearing Date:	08/20/2024
MassHealth's Rep.:	Kelly Rayen, RN, Optum	Appellant's Rep.:	
Hearing Location:	Springfield MassHealth Enrollment Center	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 06/28/2024, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 63 hours and 15 minutes (63:15) per week for school weeks and 70:00 hours per week for vacation weeks to 62:00 day/evening hours per week for school weeks and 68:00 day/evening hours per week for vacation weeks. The dates of service are from 09/15/2024 to 09/14/2025 (130 CMR 422.410; Exhibit 1). A timely appeal was filed on the appellant's behalf by her mother¹ on 07/15/2024 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for personal care attendant services.

¹ The appellant is a minor child. Her mother represented her in this appeal. See Exhibits 2 and 4.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

A fair hearing took place at the Springfield MassHealth Enrollment Center on 08/20/2024 (Exhibit 3). The appellant's mother appeared telephonically. The MassHealth representative also appeared telephonically. Exhibits 1- 4 were entered into the hearing record.

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request for PCA services was received on appellant's behalf on 06/25/2024 from her PCA provider, [REDACTED] (Provider), and is a re-evaluation for the dates of service of 09/15/2024 to 09/14/2025. In the prior authorization request for PCA services, the provider requested 63:15² day/evening hours per week for school weeks and 70:00 per week for vacation weeks.

The appellant is [REDACTED] years of age, and she lives with her mother and sister. The primary diagnoses affecting her ability to function independently are cerebral palsy, developmental delays, she is non-ambulatory, blind and incontinent of bladder and bowel (Exhibit 4).

The Optum representative testified that on 06/28/2024, MassHealth modified the PCA request to 62:00 day/evening hours per week for school weeks and 68:00 hours per week for vacation weeks. MassHealth modified the request for PCA services in the Instrumental Activity of Daily Living (IADL) tasks of meal preparation and clean up, and laundry (Exhibits 1 and 4).

Meal Preparation and Clean Up

The appellant's PCA provider requested 15 minutes, 1 time per day, 2 days per week (15 X 1 X 2)³ for assistance with meal preparation and clean up. The provider noted that the "time allowance to prepare lunch and puree for [the appellant] while parents are either at work or out of home to attend to household needs; due to impaired swallowing, non-use of all extremities, cerebral palsy, cognitive impairment" (Exhibit 4, p. 28).

MassHealth denied the time requested for assistance with meal preparation and clean up. The

² PCA time is referred to in this format, 63:15, to signify 63 hours and 15 minutes.

³ PCA time designated in this manner, (i.e., 15 X 1 X 2) means 15 minutes, 1 time per day, 7 days per week.

MassHealth representative testified that the appellant is a minor child and as such, meal preparation and clean up is a parental responsibility. Also, because the appellant is a minor child, a parent or a legal guardian must always direct PCA care.

The appellant's mother attended the hearing telephonically and testified that the appellant is "a big girl." The appellant's sister and cousin take care of her. The mother prepares food for the appellant's G-tube. Also, the appellant has difficulty swallowing and it is not easy to feed her. The mother testified that she and the other family members prepare the food. The PCA prepares food when the mother is working outside the home.

Laundry

The appellant's provider requested 75 minutes per week for assistance with laundry. The provider noted that the appellant is

dependent for laundry task including carrying loads to/from basement, wash/dry/fold items and put away due to incontinence, excessive drooling; per surrogate, laundry must be done daily to maintain supply of lap towels/extra clothing for school

(Exhibit 4, p. 30.)

MassHealth modified the requested time for assistance with laundry to 30 minutes per week. The MassHealth nurse testified that the time approved for assistance with laundry is to sort the clothes, put them in the washing machine, remove them and place them in the dryer, remove them, fold the clothes and put them away. The time for the machines to operate is not included, as it is not a covered service. Normally time is not approved for assistance with laundry because the appellant is a minor child and laundry is a parental responsibility; however, in this case due to the appellant's incontinence and drooling, 30 minutes was approved.

The appellant's mother testified that the family does the laundry for the appellant. There are "piles of laundry" because the appellant is incontinent and drools on washcloths. Also, her G-tube leaks. The PCA must do two loads of laundry a day to keep up with the appellant's needs. Because of the incontinence, the appellant's laundry must be done right away and cannot be combined with the family's laundry.

Findings of Fact

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

1. The appellant is a MassHealth member who is a minor child. She lives with her mother (Testimony).

2. MassHealth received a prior authorization request for PCA services on appellant's behalf on 06/25/2024 from her PCA provider, [REDACTED], and is a re-evaluation request for the dates of service of 09/15/2024 to 09/14/2025 (Testimony; Exhibit 4).
3. In the prior authorization request for PCA services, the provider requested 63:15 day/evening hours of assistance per week for school weeks and 70:00 hours per week for vacations weeks (Testimony; Exhibit 4).
4. The appellant's primary diagnoses affecting her ability to function independently are cerebral palsy, developmental delays, she is non-ambulatory, blind and incontinent of bladder and bowel (Testimony; Exhibit 5).
5. On 06/28/2024, MassHealth modified the PCA request to 62:00 day/evening hours per week for school weeks and 68:00 hours per week for vacation weeks (Testimony; Exhibits 1 and 4).
6. A timely appeal was filed on the appellant's request on 07/15/2024 (Exhibit 2).
7. A fair hearing took place on 08/20/2024. The appellant's mother is her legal guardian who appeared as the appellant's appeal representative (Exhibits 2 and 3).
8. The appellant's PCA provider requested 15 minutes, 1 time per day, 2 days per week (15 X 1 X 2) for assistance with meal preparation and clean up. The provider noted that the "time allowance to prepare lunch and puree for [the appellant] while parents are either at work or out of home to attend to household needs; due to impaired swallowing, non-use of all extremities, cerebral palsy, cognitive impairment" (Testimony; Exhibit 4).
9. MassHealth denied the time requested for assistance with meal preparation and clean up (Testimony; Exhibits 1 and 4).
10. The appellant's provider requested 75 minutes per week for assistance with laundry. The provider noted that the appellant is

dependent for laundry task including carrying loads to/from basement, wash/dry/fold items and put away due to incontinence, excessive drooling; per surrogate, laundry must be done daily to maintain supply of lap towels/extra clothing for school.

(Testimony; Exhibit 4.)
11. MassHealth modified the requested time for assistance with laundry to 30 minutes per week

(Testimony; Exhibits 1 and 4.)

12. The time approved for assistance with laundry is to sort the clothes, put them in the washing machine, remove them and place them in the dryer, remove them, fold the clothes and put them away. The time for the machines to operate is not included, as it is not a covered service (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency 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) 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

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.

(Emphasis added.)

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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 (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

- (A) Activities of Daily Living (ADLs). 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/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.

(B) Instrumental Activities of Daily Living (IADLs). 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 MassHealth agency as being instrumental to the health care of the member.

(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 personal care 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 personal care 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.

(Emphasis added.)

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass.

App. Ct. 333 , 334 (1981); Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth made modifications to the appellant's request for PCA services submitted on 06/25/2024 from her PCA provider, [REDACTED]. The request is a re-evaluation for dates of service from 09/15/2024 to 09/14/2025. In the prior authorization request for PCA services, the provider requested 63:15 day/evening hours of assistance per week for school weeks and 70:00 hours per week for vacations weeks (Testimony; Exhibit 4). MassHealth modified the request by reducing the time in the areas of meal preparation and clean up and assistance with laundry.

Meal Preparation and Clean Up

The appellant's PCA provider requested 15 minutes, 1 time per day, 2 days per week (15 X 1 X 2) for assistance with meal preparation and clean up. The provider noted that the "time allowance to prepare lunch and puree for [the appellant] while parents are either at work or out of home to attend to household needs; due to impaired swallowing, non-use of all extremities, cerebral palsy, cognitive impairment." MassHealth denied the time requested for assistance with meal preparation and clean up because the appellant is a minor child who lives with a parent, who has the legal responsibility to prepare meals for her child.

The appellant's mother testified that the appellant has a G-tube and it is "hard for her to swallow." The mother stated it is not easy to feed her. She prepares meals for the appellant when she is not working outside the home. Otherwise, the PCA prepares meals.

MassHealth's modification is supported by the regulations. Since the appellant is a minor child, the MassHealth regulations expect that the parent(s) who lives with the appellant will incorporate the appellant's meal preparation and cleanup with the family's. The appellant's mother has provided no reason why she is unable to prepare the appellant's meals. Accordingly, this portion of the appeal is denied.

Laundry

The appellant's provider requested 75 minutes per week for assistance with laundry. The provider noted that the appellant is

dependent for laundry task including carrying loads to/from basement, wash/dry/fold items and put away due to incontinence, excessive drooling; per surrogate, laundry must be done daily to maintain supply of lap towels/extra clothing for school.

MassHealth modified the requested time for assistance with laundry to 30 minutes per week. The MassHealth representative correctly stated that the time approved for assistance with laundry is to

sort the clothes, put them in the washing machine, remove them and place them in the dryer, remove them, fold the clothes and put them away. The time for the machines to operate is not included, as it is not a covered service.

Laundry, as well as other IADLs, is normally not covered by the PCA program when a minor child appellant lives with her parents and/or other family members, as is the case here. MassHealth acknowledged that the appellant has increased needs for assistance with laundry, due to her drooling, and her incontinence. The appellant's mother testified that the family experiences an increase in laundry because of the appellant's needs; however, the mother was unable to show that the PCA needs more than 30 minutes per week for this task. Accordingly, this portion of the appeal is denied.

For the foregoing reasons, this appeal is denied.

Order for MassHealth

None.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

MassHealth Representative: Optum MassHealth LTSS, P.O. Box 159108, Boston, MA 0221