

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed in part; Denied in part	Appeal Number:	2411191
Decision Date:	10/17/2024	Hearing Date:	10/11/2024
Hearing Officer:	Amy B. Kullar, 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:	Dismissed in part; Denied in part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	10/17/2024	Hearing Date:	10/11/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South 2 (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 June 25, 2024, MassHealth modified the appellant's prior authorization request for personal care attendant services. *See* 130 CMR 450.024(A), 130 CMR 422.410(A)(7), 130 CMR 422.410(B)(1) and Exhibit 1. The appellant filed this appeal in a timely manner on July 18, 2024. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict or modify 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 MassHealth representative appeared via telephone and identified herself as a registered nurse and clinical appeals reviewer. The appellant also appeared at hearing via telephone and verified her identity. The parties' testimony and record evidence are summarized as follows:

The appellant is an adult over the age of 65. The appellant resides in a household of three, which includes her adult son and her spouse, who is also a PCA consumer. Testimony and Exhibit 6. The appellant's medical history includes primary end stage renal disease, for which she attends dialysis three times a week, diabetes, COPD, and severe left hip pain. The appellant had an initial evaluation for PCA services on May 10, 2024, and on June 18, 2024, her PCM agency, Tempus Unlimited, Inc., requested 11 hours per week for the service period of 6/25/2024-6/24/2025. MassHealth modified this request on June 25, 2024, to 9 hours per week for the service period of 6/25/2024-6/24/2025. Testimony, Exhibit 6. MassHealth made three (3) modifications related to PCA assistance with bathing, meal preparation and cleanup, and laundry.

Based on the testimony and discussion at hearing, the category of laundry, an Instrumental Activity of Daily Living, is no longer in dispute. The appellant agreed to accept 30x1 (30 minutes per week) for this category.

The remaining disputed categories are bathing, and meal preparation and cleanup.

Bathing

The MassHealth representative testified that the appellant's PCM agency requested twenty minutes per episode, one time per day, seven days per week (20x1x7) for each episode of bathing. MassHealth modified this request to fifteen minutes, one time per day, seven days per week (15x1x7). Testimony, Exhibit 6. The MassHealth representative explained that this request was modified because the time the appellant's PCM agency requested is longer than the time that is ordinarily required for someone with the appellant's physical needs. Testimony. The MassHealth representative stated that the purpose of PCA assistance with bathing is to assist the appellant with getting on and off her shower chair, and in and out of the bathtub. Testimony. The PCA should be assisting the appellant with washing her body, lower body and hard-to-reach areas, and assisting the appellant with washing her hair. Testimony. The appellant stated in response that she is able to participate in showering. The appellant can wash the front of her body, and her PCA washes her back and legs. Testimony. When questioned by the MassHealth representative as to the time it takes to shower, the appellant said that when she is in the shower washing her body, it takes 30 minutes to her to wash her body. Testimony. The MassHealth representative stated that the PCA program only covers "hands on assistance," and that the "PCA should only be doing what [the appellant] can't do; if she can wash your back, lower legs, and hard-to-reach areas, this is maybe 15 minutes for the PCA to be actively washing" the appellant. Testimony.

Meal Preparation and Cleanup

The MassHealth representative testified that the appellant's PCM agency requested forty minutes per day, seven days per week (280 minutes per week) for meal preparation and cleanup. MassHealth modified this request to thirty minutes per day, seven days per week (210 minutes per week). Testimony, Exhibit 6. The MassHealth representative explained that this request was modified because the time the appellant resides in the same household as her spouse, who is also a PCA consumer, and therefore meal preparation and cleanup is considered a shared task under the MassHealth regulations. Testimony. The appellant's spouse receives 55 minutes per day for meal preparation and cleanup, and this means that their household has a total of 85 minutes per day for meal preparation and cleanup. Testimony.

Findings of Fact

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

1. Appellant is an adult MassHealth member over the age of 65.
2. Appellant has diagnoses of primary end stage renal disease, for which she attends dialysis three times a week, diabetes, COPD, and severe left hip pain. Testimony and Exhibit 6.
3. On June 18, 2024, appellant's PCM agency sent MassHealth a PA request seeking 11 hours per week for the service period of 6/25/2024-6/24/2025. Testimony and Exhibit 6.
4. On July 11, 2024, MassHealth modified the request in three (3) categories and approved the appellant for 48 hours per week for the service period of 6/25/2024-6/24/2025; specifically, by modifying the times for "bathing, meal preparation and cleanup, and housekeeping." Exhibits 1 and 6.
5. At hearing, the appellant accepted MassHealth's modification of the laundry category (30x1, or 30 minutes per week), which resolves the dispute related to PCA assistance with this task. Testimony.
6. The appellant seeks time for PCA assistance with bathing as follows: 20 minutes per episode, 1 time per day, 7 days a week (140 minutes per week). Testimony and Exhibit 6.
7. MassHealth approved 15 minutes of PCA assistance per episode, 1 time per day, 7 days a week (105 minutes per week) for bathing. Testimony and Exhibit 6.

8. The appellant seeks time for PCA assistance with meal preparation and cleanup as follows: 40 minutes per day, 7 days a week (280 minutes per week). Testimony and Exhibit 6.
9. MassHealth approved thirty minutes per day, seven days per week (210 minutes per week) of PCA assistance for meal preparation and cleanup. Testimony and Exhibit 6.
10. The appellant resides in a household with another PCA program consumer, who receives 55 minutes per day of PCA assistance for meal preparation and cleanup. Testimony and Exhibit 6.

Analysis and Conclusions of Law

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

See 130 CMR 422.403(C).

The requested services must also be medically necessary for the prior authorization to be approved. MassHealth 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 service is “medically necessary” if:

- 1) it is reasonably calculated to prevent, diagnose, prevent 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 Division. Services that are less costly to the Division include, but are not limited to, health care reasonably known by the provider or identified by the Division 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.
- (B) 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. A provider must make those records, including medical records, available to the Division upon request. (See 42 U.S.C. 1396a(a)(30) and 42 CFR 440.230 and 440.260.)
- (C) A provider's opinion or clinical determination that a service is not medically necessary does not constitute an action by the MassHealth agency.

See 130 CMR 450.204.

Pursuant to 130 CMR 422.410(A), 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 or 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.

Pursuant to 130 CMR 422.410(B), 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 Division as being instrumental to the health care of the member.

Pursuant to 130 CMR 422.410(C)(1) and (2), the PCM agency **must assume**:

- (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**.

See, 130 CMR 422.410 (emphasis added).

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.

See, 130 CMR 422.412 (emphasis added).

The appeal is dismissed as to PCA assistance with laundry, which resolved the dispute related to PCA assistance with this task. The appellant accepted MassHealth's modification of 30 minutes per week of PCA assistance time (30x1) for laundry.

That portion of the appeal is therefore DISMISSED.

As to the appellant's request for PCA assistance with bathing, the appeal is denied. The appellant requested 20x1x7, or 140 minutes per week, of PCA assistance with bathing and this was modified to 15x1x7, or 105 minutes per week. This task involves the appellant's PCA assisting with washing the appellant's body in the areas that the appellant is unable to reach herself. The appellant's testimony on this category was not persuasive. When the MassHealth representative asked the appellant how long it took her to physically wash her body in the shower with the assistance of a PCA, she stated that it takes 30 minutes. The appellant was unable to credibly explain why the extra five minutes for each episode of bathing are medically necessary, and there was no evidence presented that explained why the appellant needs additional time for bathing. The appellant has not shown that additional time for bathing is medically necessary.

This portion of the appeal is therefore DENIED.

As to the appellant's request for PCA assistance with meal preparation and cleanup, this appeal is denied. The appellant requested 40 minutes per day (280 minutes per week) for PCA assistance with meal preparation and cleanup. MassHealth modified this request to 30 minutes per day (210 minutes per week). MassHealth correctly modified this request because the record shows that appellant resides in a household with another PCA consumer, and the regulations direct that the PCM agency must take into account the shared nature of the homemaking tasks where there is more than one PCA consumer residing in a household. The appellant accepted this explanation as to MassHealth's modification with the requested time for laundry, and the rationale here is identical. Under the regulations, meal preparation is a shared task for PCA consumers that reside in the same household, and the appellant raised no facts or evidence that would require MassHealth to provide extra hours for meal preparation and cleanup for her household.

This portion of the appeal is therefore DENIED.

Order for MassHealth

For the prior authorization period 6/25/2024-6/24/2025, approve the following amounts of PCA assistance for the appellant:

- Bathing: 15x1x7 (105 minutes per week);
- Laundry: 30x1 (30 minutes per week);
- Meal preparation and cleanup: 30x1x7 (210 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.

Amy B. Kullar, Esq.
Hearing Officer
Board of Hearings

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