

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2412065
Decision Date:	9/17/2024	Hearing Date:	09/05/2024
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for MassHealth:

Robin Brown

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:	Denied	Issue:	Prior Authorization; PCA Services
Decision Date:	9/17/2024	Hearing Date:	09/05/2024
MassHealth's Rep.:	Robin Brown	Appellant's Rep.:	PCA/Appeal Rep
Hearing Location:	All Parties Appeared by Telephone	Aid Pending:	Yes

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 July 30, 2024, MassHealth modified the appellant's prior authorization request for personal care services. (130 CMR 422.000; Exhibit 1A; Exhibit 1B). The appellant filed this appeal in a timely manner on August 5, 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 422.410).

Issue

Whether MassHealth was correct in modifying the appellant's prior authorization request for personal care services. (130 CMR 420.410).

Summary of Evidence

The appellant appeared at the beginning of the hearing and authorized her personal care attendant (PCA) to serve as her appeal representative. The appellant asked to be dismissed from the hearing. The appellant did not request an interpreter prior to the hearing but one was provided through a service on the day of the hearing as it was clear that the hearing could not move forward without an interpreter.

The appellant is an adult whose diagnoses include: severe refractory persistent asthma with obstruction; arthritis with chronic pain in the spine, shoulders, knees, ankles and hands; and severe osteoporosis. (Testimony; Exhibit 4). The appellant has had surgeries to both shoulders in 2003 and 2006, as well as surgery to her right thumb. (Testimony; Exhibit 4). The appellant has chronic pain and limited mobility throughout her body due to the arthritis. (Testimony; Exhibit 4). The appellant has shortness of breath, wheezing and activity intolerance due to the severe asthma. (Testimony; Exhibit 4). The appellant has a constant chronic cough and is unable to speak full sentences without having to take a break due to coughing. (Testimony; Exhibit 4). In the past year, the appellant had one fall with an injury to the right side of her body and two emergency room visits for asthma complications. (Testimony; Exhibit 4). The appellant resides with family members including her spouse.

The appellant requested 26.25 day/evening hours each week for 1 year. (Testimony; Exhibit 4). MassHealth modified this request and approved 21 day/evening hours each week for one year. (Testimony; Exhibit 4). The dates of service are September 7, 2024 to September 6, 2025. (Testimony; Exhibit 4).

MassHealth made one adjustment to the time requested for PCA services. The appellant requested 45 minutes each day for assistance with meal preparation. MassHealth denied the time requested as the appellant lives with her spouse. The MassHealth representative testified that the regulations require the personal care management (PCM) agency to assume that when a member is living with family members, the family members will help with most instrumental activities of daily living (IADLs) including meal preparation. The regulations define a family member as a spouse of the member, parent of a minor member, including an adoptive parent or any legally responsible relative. The MassHealth representative testified that, since the appellant resides with her spouse, he is a legally responsible relative who should be performing this task. The MassHealth representative noted that MassHealth does consider individual circumstances as well but the PCM agency did not indicate what special circumstances exist for MassHealth to consider in approving time for assistance with IADLs. The appellant did not request time for assistance with any other IADL.

The appellant's PCA testified that the appellant's spouse is home for most meals but does not prepare them for the appellant as he has other responsibilities. The PCA testified that he does not prepare breakfast for the appellant but does prepare lunch and dinner. The PCA testified that he

does not know specifically what other responsibilities or tasks the appellant's spouse needs to perform during mealtimes but they do have children and the spouse needs to take them to different activities. The PCA testified that the appellant can access prepared meals on her own. The PCA testified that he was not sure if the appellant's spouse was working.

Findings of Fact

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

1. The appellant is an adult whose diagnoses include: severe refractory persistent asthma with obstruction; arthritis with chronic pain in the spine, shoulders, knees, ankles and hands; and severe osteoporosis.
2. The appellant has had surgeries to both shoulders in 2003 and 2006, as well as surgery to her right thumb.
3. The appellant has chronic pain and limited mobility throughout her body due to the arthritis.
4. The appellant has shortness of breath, wheezing and activity intolerance due to the severe asthma.
5. The appellant has a constant chronic cough and is unable to speak full sentences without having to take a break due to coughing.
6. In the past year the appellant had one fall with an injury to the right side of her body and two emergency room visits for asthma complications.
7. The appellant resides with family members including her spouse.
8. The appellant requested 26.25 day/evening hours each week for 1 year.
9. MassHealth modified this request and approved 21 day/evening hours each week for one year.
10. The dates of service are September 7, 2024 to September 6, 2025.
11. The appellant requested 45 minutes each day for assistance with meal preparation.
12. MassHealth denied the time requested for meal preparation as the appellant lives with her spouse.

13. The appellant's spouse is home for most meals but does not prepare them for the appellant.
14. The PCA prepares lunch and dinner for the appellant.

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)).

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 and housekeeping. (130 CMR 422.401(B)(1)).

As noted by the MassHealth representative at hearing, 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 regulations define a family member as the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative. (130 CMR 422.402).

MassHealth was correct in making the mandated assumption that the appellant's spouse provides assistance with most IADLs. Neither the PCM agency or appeal representative provided testimony or evidence regarding any individual circumstances for MassHealth to consider in authorizing time for meal preparation for the appellant. The appeal representative did not offer any testimony or evidence regarding a possible need for the appellant to have separate meals from her family. The appeal representative did not offer any testimony or evidence regarding other responsibilities of the appellant's spouse that would prevent him from preparing meals for the appellant. The appeal representative testified that the appellant's spouse is home during most meals. The testimony presented by the appeal representative supported MassHealth's decision rather than demonstrating that the agency made an error in their modifications.

The decision made by MassHealth regarding adjustment to the time for meal preparation was correct.

This appeal is denied.

Order for MassHealth

Release the appellant's aid pending and implement the agency decision on appeal.

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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

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