

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2413861
Decision Date:	12/5/2024	Hearing Date:	10/07/2024
Hearing Officer:	Mariah Burns		

Appearance for Appellant:



Appearance for MassHealth:

Kelly Rayen, RN for 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; Denied in Part	Issue:	Prior Authorization; Personal Care Attendant Services
Decision Date:	12/5/2024	Hearing Date:	10/07/2024
MassHealth's Rep.:	Kelly Rayen, RN	Appellant's Rep.:	
Hearing Location:	Remote	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 August 12, 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 September 9, 2024, and Aid Pending was applied. *See* 130 CMR 610.015(B) and Exhibit 2. MassHealth's decision to restrict a member's request for 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 acted within the scope of the regulations in modifying the appellant's prior authorization request for PCA services.

Summary of Evidence

The appellant is an adult MassHealth member under the age of 65 who was represented at the hearing by his mother, who is also his legal guardian. (Exhibit 6). MassHealth was represented by a clinical appeals reviewer and nurse 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:

The appellant has diagnoses of Down Syndrome, mild autism spectrum disorder, obsessive compulsive disorder, incontinence, and a host of other conditions summarized at Exhibit 5 at 7. The appellant lives with his mother and his brother who also receives PCA services. On August 8, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 38 hours and 30 minutes of PCA assistance per school week, and 41 hours and 45 minutes of assistance per vacation week. On August 12, 2024, MassHealth modified the request and approved the appellant for 34 hours and 45 minutes of weekly assistance for school weeks and 36 hours and 30 minutes of assistance per vacation week with dates of service from November 5, 2024, to November 4, 2025.

The only modification was made to assistance with meal preparation. The appellant requested 45 minutes per day, 5 days per week for school weeks and 45 minutes per day, 7 days per week for vacation weeks for assistance with preparing his dinner. The MassHealth representative reported that this was denied because the appellant resides with family members who are required to assist the appellant with Instrumental Activities of Daily Living (IADLs) unless extenuating circumstances exist. The appellant's mother testified that she has brain cancer, which inhibits her ability to assist the appellant with preparing his dinner. She reported that the appellant can eat some of the same food as the other family members, but that he has swallowing issues that require his food to be cut up and he has textural sensitivities due to his autism that can make him a picky eater. She estimated that the PCA prepares the appellant's dinner at least 5 nights per week because of her illness. The MassHealth representative offered to approve the appellant for assistance with meal preparation at 30 minutes per day, 5 days per week for school weeks and 30 minutes per day, 7 days per week for vacation weeks. The appellant 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 an adult MassHealth member under the age of 65 who has diagnoses of Down Syndrome, mild autism spectrum disorder, obsessive compulsive disorder, incontinence, and a host of other conditions. Exhibit 4, Exhibit 5 at 7.

2. On August 8, 2024, MassHealth received a prior authorization request on the appellant's behalf for a re-evaluation of services, requesting a total of 38 hours and 30 minutes of PCA assistance per school week, and 41 hours and 45 minutes of assistance per vacation week. Exhibit 5 at 33-34, 61-62. On August 12, 2024, MassHealth modified the request and approved the appellant for 34 hours and 45 minutes of weekly assistance for school weeks and 36 hours and 30 minutes of assistance per vacation week with dates of service from November 5, 2024, to November 4, 2025. Testimony, Exhibit 1.
3. The specific modification was made with the task of meal preparation. Exhibit 1.
4. The appellant filed a timely request for fair hearing on September 9, 2024. Exhibit 2.
5. The appellant requested 45 minutes per day, 5 days per week for school weeks and 45 minutes per day, 7 days per week for vacation weeks for assistance with preparing his dinner. Exhibit 5 at 28, 56. MassHealth denied this request and approved no time for assistance with meal preparation. Exhibit 1. At the hearing, the MassHealth representative offered to approve the appellant for assistance with meal preparation at 30 minutes per day, 5 days per week for school weeks and 30 minutes per day, 7 days per week for vacation weeks.
6. The appellant resides with his mother and his brother, who also receives PCA services. His mother has brain cancer that often makes it difficult for her to assist the appellant with preparing his dinner. The appellant largely eats the same food as the rest of his family, however, he has texture sensitivities that prevent him from eating all of the same food, and he has swallowing issues that require his food to be cut up into very small pieces. 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 as laundry, shopping, and housekeeping), meal preparation and clean-up, transportation, and

- (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 “medical services available from other MassHealth providers...assistance provided in the form of cueing, prompting, supervision, guiding, or coaching....[or] services provided by family members.” 130 CMR 422.412(B), (C) and (F). When determining the appropriate amount of physical assistance required by a MassHealth member, the following assumptions are made:

- (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,

other special needs codified in the regulations. 130 CMR 422.410(A) and (B).

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.

130 CMR 422.410(C).

At issue in this case is whether the appellant met his burden of proof in establishing that he is entitled to more PCA time than MassHealth approved for assistance with preparing his dinners. For the reasons stated herein, I find that he has partially met this burden, but not to the extent he originally requested.

The appellant argues that he is entitled to 45 minutes per day for assistance with preparing his dinners. He provided convincing evidence that he requires some assistance, as his mother credibly testified that her health frequently prevents her from preparing the appellant's meals and that the appellant does not eat all of the same food as the rest of his family. However, that the appellant's brother also receives PCA services is an important point to note. The regulations require the appellant and his brother to share services for IADLs unless extenuating circumstances exist. While the appellant does eat some different foods, there is no reason why the brothers cannot share services for certain aspects of meal preparation, such as clean up. The appellant did not provide sufficient evidence to demonstrate that he is entitled to more than the 30 minutes per day of assistance that was offered by the MassHealth representative. For those reasons, I impose the offer made by the MassHealth representative at the hearing, and I decline to approve the appellant's request for assistance with meal preparation in its entirety.

For the foregoing reasons, the appeal is hereby approved in part and denied in part.

Order for MassHealth

Approve the appellant for 30 minutes per day, 5 days per week for PCA assistance with meal preparation during school weeks and 30 minutes per day, 7 days per week for assistance during vacation weeks. Remove Aid Pending.

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