

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Dismissed in part	Appeal Number:	2414029
Decision Date:	12/10/2024	Hearing Date:	10/08/2024
Hearing Officer:	Casey Groff	Record Closed:	12/06/2024

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:	Approved in part; Dismissed in part	Issue:	Personal Care Attendant (PCA) Services
Decision Date:	12/10/2024	Hearing Date:	10/08/2024
MassHealth's Rep.:	Kelly Rayen, R.N.	Appellant's Rep.:	<i>Pro se</i>
Hearing Location:	Board of Hearings (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 8/15/2024, MassHealth informed Appellant that it modified her prior authorization (PA) request for personal care attendant (PCA) services. *See* 130 CMR 450.204.(A)(1) and Exhibit 2. Appellant filed a timely appeal on 9/9/24. *See* Exh. 1 and 130 CMR 610.015(B). Modification of a PA request for PCA services is a valid basis for appeal. *See* 130 CMR 610.032. The record was re-opened for additional evidence and closed on 12/6/24. *See* Exh. 5.

Action Taken by MassHealth

MassHealth modified Appellant's prior authorization request for PCA services.

Issue

The issue on appeal is whether MassHealth was correct in modifying Appellant's request for PCA services.

Summary of Evidence

At hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant represented herself, appearing *pro se*. All parties appeared by telephone.

Through testimony and documentary submissions, the MassHealth representative presented the following evidence: Appellant is an adult female over the age of 65 and is enrolled as a consumer in MassHealth's Personal Care Attendant (PCA) program. Appellant's primary diagnosis is degenerative joint disease (DJD) of the bilateral knees which impairs her standing tolerance and ability to balance. See Exh. 4, pp. 6-13. She is in consultation with her provider for anticipated knee replacement surgery but as of the hearing date did not have any procedure scheduled.¹ See Exh. 4, pp. 6-13.

On 7/29/24, a registered nurse and an occupational therapist from Appellant's personal care management (PCM) agency, Independence Associates, Inc., performed an initial PCA evaluation of Appellant at her home to determine the amount of assistance required to perform her activities of daily living (ADLs) and instrumental activities of daily living (IADLs). See *id.* at 10. Based on the nurse's evaluation and OT functional status report, the PCM agency submitted a prior authorization (PA) request (#P24228018D) to MassHealth on behalf of Appellant seeking 18 hours and 15 minutes per week of PCA services for dates of service beginning 8/15/24 and ending 8/14/25. See Exh. 1, p. 3.

Through a notice dated 8/15/2024, MassHealth informed Appellant that it modified her request for PCA services by approving a total of 15 hours per week. *Id.* The modification was based on MassHealth's reduction in the amount of assistance authorized for the following IADLs: (1) meal preparation, (2) housekeeping, and (3) shopping. See *id.* The modifications were based on MassHealth regulations 130 CMR 450.204 and 130 CMR 422.410(C)(1). At hearing, the parties reviewed each modification individually, as follows:

Meal Preparation

Appellant's PCM agency requested a total of 83 minutes per day for assistance with meal preparation and clean-up (83x1x7), broken down as 15 minutes for breakfast, 25 minutes for lunch, 40 minutes for dinner, and 3 minutes for snack. See *id.* at 31. In support of its request, the PCM agency noted that Appellant requires "maximum assistance" for all meal preparation tasks, including prepping, cooking, plating and clean-up of all meals and snacks throughout the day; that the Appellant has poor standing tolerance, difficulty bending/squatting and ambulating while carrying items; she has impaired balance and decreased endurance and bilateral knee pain due to DJD. *Id.* The provider also noted that Appellant does not receive other meal preparation services, such as home delivered meals or meals through programs attended outside of the home. *Id.* In

¹ At hearing, it was discussed that if Appellant undergoes such surgery during this PA period, her PCM agency could submit a request for an adjustment to her PCA hours to reflect any changes in Appellant's needs.

addition, in completing the PA request, the PCM agency answered “no” in response to the question “Does a legally responsible person live with the consumer? (Spouse, legal guardian, parent of a minor child). *Id.* at 29.

MassHealth approved 60 minutes per day (60x1x7) or 420 minutes per week (420x1) for meal preparation assistance. MassHealth explained that IADLs that can be performed by live-in family members are non-covered PCA services under 130 CMR 422.410(C)(1). The MassHealth representative testified that documentation in the PA request suggested that Appellant lives with her spouse. Under the MassHealth regulations, family members, such as a spouse, are expected to provide IADL care to the consumer. MassHealth also testified that the PCM agency identified Appellant as requiring “maximum assistance,” with meal preparation, however, she was noted to only require minimal assistance with bathing, grooming, and dressing, but was independent for all other ADLs.

In response, Appellant testified that she does not have a spouse. She lives with her companion of [REDACTED] (hereinafter Appellant’s “partner”), but they were never legally married. Appellant testified that her partner has his own medical issues. He had a stroke which severely limits his functional ability; he cannot hear; and he has atrial fibrillation and diabetes. He cannot even get up to get himself a glass of water or put on his shoes. If her PCA is not present, she has no one to assist her. Appellant testified that she is in extreme pain and will continue to be in pain until she can undergo her operation.

Appellant testified that she and her partner have different meal preparation needs. Her partner is on a medically prescribed low salt and low-carbohydrate diet due to his diabetes and heart condition. Appellant testified that her ability to assist with meal preparation tasks is limited because of her impaired standing tolerance. She could hypothetically put together a sandwich if seated; however, would still need someone to gather the food items and utensils and place everything back when done. It is all the “little tasks” that she cannot do which add up. To stand, she needs to lean on the counter but this wears on her elbows. When she does stand, she is in so much pain that she cannot breathe. She cannot stand long enough to cook over a stove and is afraid that she could fall and burn herself. The injections she previously received to help with the pain are no longer working.

The MassHealth representative responded that even if not legally married, the modification was appropriate because when living with another PCA consumer, MassHealth will reimburse for IADL homemaking tasks, such as meal prep, on a shared basis under 130 CMR 422.410(C). MassHealth testified that her partner is currently approved for 45 minutes per day for meal preparation. Typically, MassHealth allows a maximum of 90-100 minutes per day, per household for meal preparation services. Here, the combined authorized hours would put them at 105 minutes. As such, MassHealth was not inclined to approve an additional 23 minutes per day as requested.

Housekeeping

Appellant's PCM agency requested a total of 60 minutes per week (60x1x1) for assistance with housekeeping. *See id.*, at 31. Through its 8/15/24 notice, MassHealth informed Appellant that it modified the request for housekeeping to 45 minutes per week (45x1x1). *Id.* At the hearing, MassHealth agreed to restore the authorized time for housekeeping, as requested at 60x1x1, thereby resolving this modification.

Shopping

Appellant's PCM agency requested a total of 60 minutes per week (60x1x1) for assistance with shopping. *See id.* at 32. The PCM agency noted that, based on its initial evaluation findings, Appellant requires maximum assistance for shopping tasks, including shopping for Appellant's personal items, groceries and prescriptions; as well as assistance with related driving tasks and putting away purchased items in Appellant's home. *Id.*

MassHealth approved 45 minutes per week (45x1x1) for shopping. *Id.* MassHealth responded that Appellant's partner is currently approved for 45 minutes per week of shopping assistance. MassHealth limits the time for assistance for shopping to 90 minutes per week, per household. MassHealth was not inclined to approve the requested time because it would exceed the household maximum.

Appellant testified that she disagreed with the modification stating that 45 minutes was not enough time for the PCA to get to one store and back, let alone purchasing and putting everything away. Appellant explained that the PCA makes multiple shopping trips per week to different stores. Although some of their shopping needs overlap, they also have distinct medical and dietary needs that require the PCA to make separate shopping trips. For example, the PCA has to go to Costco to get her partner's prescriptions and diabetes supplies, which is out of the way from where she purchases groceries. According to Appellant, 45 minutes was insufficient for the PCA to assist with her personal shopping needs, which are separate the needs of her partner.

Findings of Fact

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

1. Appellant is an adult female over the age of 65 with a primary diagnosis of DJD of the bilateral knees which impairs her standing tolerance and ability to balance.
2. Appellant lives with her partner of [REDACTED], but they are not legally married, and Appellant does not live with any legally responsible family member.

3. Appellant's partner is unable to assist her in performing IADLs due to his own health issues, and because of his physical impairment, he also receives PCA services.
4. Pursuant to an initial PCA evaluation of Appellant, the PCM agency submitted a PA request to MassHealth seeking 18 hours and 15 minutes per week of PCA services for dates of service beginning 8/15/24 and ending 8/14/25.
5. Through a notice dated 8/15/2024, MassHealth informed Appellant that approved a total of 15 hours per week based on its decision to modify times requested for (1) meal preparation, (2) housekeeping, and (3) shopping.
6. Appellant's PCM agency requested a total of 83 minutes per day for assistance with meal preparation and clean-up (83x1x7), broken down as 15 minutes for breakfast, 25 minutes for lunch, 40 minutes for dinner, and 3 minutes for snack.
7. MassHealth approved 60 minutes per day (60x1x7) or 420 minutes per week (420x1) for meal preparation assistance.
8. Appellant requires "maximum assistance" for all meal preparation tasks, including prepping, cooking, plating and clean-up of all meals and snacks throughout the day; that the Appellant has poor standing tolerance, difficulty bending/squatting and ambulating while carrying items; she has impaired balance and decreased endurance and bilateral knee pain due to DJD.
9. Appellant does not receive any outside meal preparation services.
10. Appellant's partner is prescribed a low salt and low-carbohydrate diet due to his diabetes and heart condition.
11. Appellant's partner is approved for 45 minutes per day for meal preparation.
12. Appellant's PCM agency requested 60 minutes per week (60x1x1) for assistance with housekeeping.
13. Through its 8/15/24 notice, MassHealth informed Appellant that it modified the request for housekeeping to 45 minutes per week (45x1x1).
14. At the hearing, MassHealth agreed to restore housekeeping as requested at 60x1x1.
15. Appellant's PCM agency requested a total of 60 minutes per week for shopping.

16. Appellant requires maximum assistance for shopping tasks, including shopping for Appellant's personal items, groceries and prescriptions; as well as assistance with related driving tasks and putting away purchased items in Appellant's home.
17. MassHealth approved 45 minutes per week (45x1x1) for shopping.
18. Appellant's partner is currently approved for 45 minutes per week of shopping assistance.
19. Appellant PCA makes multiple shopping trips per week to different stores and has to make separate trips to accommodate both her and her partner's individual prescription and dietary needs.

Analysis and Conclusions of Law

MassHealth will pay for personal care attendant (PCA) services to eligible members who can appropriately be cared for in the home, so long as the following conditions are met:² First, the services must be "prescribed by a physician or nurse practitioner who is responsible for the member's...care." 130 CMR 422.403(C)(1). Additionally, the "member's disability [must be] permanent or chronic in nature and impair the member's functional ability to perform [at least two] ADLs ... without physical assistance." See 130 CMR 422.403(C)(2)-(3). Finally, MassHealth must determine that the requested services are medically necessary. See 130 CMR 422.403(4). 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.

See 130 CMR 450.204(A).

² PCA services are defined as "physical assistance with ADLs and IADLs provided to a member by a PCA in accordance with the member's authorized evaluation or reevaluation, service agreement, and 130 CMR 422.410." See 130 CMR 422.002.

Medically necessary services must also “be of a quality that meets professionally recognized standards of health care and must be substantiated by the record including evidence of such medical necessity and quality.” 130 CMR 450.204(B).

Here, there is no dispute that Appellant meets all prerequisites to qualify for PCA services. As reflected in its 8/15/24 notice, MassHealth approved the time for PCA assistance with each ADL category that was requested. Once this threshold is met, MassHealth will consider whether it is necessary to reimburse the PCA for assisting the member in providing instrumental activities of daily living or “IADLs,” which consist of the following:

(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.

See 130 CMR 422.410(B).

When determining the amount of time needed to assist a consumer in completing an IADL, MassHealth requires that the PCM agency presume the following:

- (1) When a member is living with family members, the family member 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) The MassHealth agency will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

See 130 CMR 422.410(C).

The term “family member” as referenced in subsection (1) above, is defined “as the spouse of the member, the parent of a minor member, including an adoptive parent, or any legally responsible relative.” 130 CMR 422.401.

With respect to both ADLs and IADLs, MassHealth will approve the length of the “activity time performed by a PCA in providing assistance with the [task].” See 130 CMR 422.411. “Activity time” is defined as the actual amount of time spent by the PCA “physically assisting the member” with their ADL/IADL. See 130 CMR 422.402. MassHealth does not pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412.

In this case, MassHealth modified the requested time for the IADLs of meal preparation, housekeeping, and shopping. At hearing, MassHealth restored the time requested for housekeeping to 60 minutes per week, thereby resolving this appeal issue. As such, the appeal is DISMISSED in part as it relates to housekeeping.

With respect to the remaining modifications, Appellant demonstrated that she requires more than 60 minutes for meal preparation per day and more than 45 minutes per week than approved for shopping assistance. These IADLs were initially modified based on subsection (1) of 130 CMR 422.410(C), above, which discusses the presumption that live-in family members will assist with IADL tasks. At hearing, Appellant testified that she does not live with a “family member” as defined in 130 CMR 422.401, above. Rather, Appellant testified, she is unmarried and has a live-in partner who, due to his own functional impairments, is unable to assist with IADLs. Because her partner has also been approved for PCA services, the pertinent issue turned to the applicability of subsection (2), above, i.e., whether Appellant’s request overlapped with the 45 minutes of PCA assistance approved for Appellant’s partner’s respective shopping and meal preparation needs. Based on the documentation and testimony presented at hearing, Appellant’s request for 83 minutes of meal prep per day and 60 minutes of shopping assistance per week appropriately accounted for Appellant’s individual PCA needs, which were separate and apart from the assistance time already allotted to her partner. According to the PCM’s evaluation, Appellant requires maximum assistance with both IADL categories based on her impaired standing tolerance and balancing deficits. The PCM agency also specified that the time requested for shopping was for the PCA to assist Appellant in shopping for her “personal items, groceries, and prescriptions, and to put these items away.” See Exh. 4, p. 32. In addition, Appellant testified that her partner is prescribed a low-salt and low-carbohydrate diet due to his diabetes and heart condition. The testimony demonstrated that while the PCA can combine some IADL tasks to accommodate both Appellant and her partner, they each have individual shopping and meal preparation needs that warrant the additional PCA time, as requested. Accordingly, the appeal is APPROVED in part as to meal preparation and shopping.

Order for MassHealth

For PA period 8/15/24 through 8/14/25, approve PA request in full at 18 hours and 15 minutes per week, inclusive of 83 minutes per day for meal preparation, 60 minutes for housekeeping, and 60 minutes for shopping.³

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.

Casey Groff
Hearing Officer
Board of Hearings

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

³ This decision relates solely to PA request number P24228018D as referenced in MassHealth notice 8/15/24. As discussed at hearing, if Appellant undergoes surgery (or has any medical change) resulting in a request for an adjustment in PCA hours, MassHealth will issue a new determination that will include appeal rights. This decision does not impact any determinations made following the 8/15/24 notice.