

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in part; Denied in part; Dismissed in part	Appeal Number:	2153731
Decision Date:	9/30/2021	Hearing Date:	06/11/2021
Hearing Officer:	Scott Bernard	Record Open to:	06/24/2021

Appearance for Appellant:



Appearance for MassHealth:

Mary-Jo Elliott, R.N.



*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; Dismissed in part	Issue:	PCA
Decision Date:	9/30/2021	Hearing Date:	06/11/2021
MassHealth's Rep.:	Mary-Jo Elliott, RN	Appellant's Rep.:	
Hearing Location:	Quincy Harbor South		

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 April 30, 2021, MassHealth modified the appellant's Prior Authorization (PA) request for MassHealth Personal Care Attendant (PCA) services because the time requested for assistance with bathing or grooming was longer than ordinarily required with someone with the appellant's special needs and because the documentation submitted on the appellant's behalf indicated that the requested services did not meet professionally recognized standards of care. (See 130 CMR 422.410(A)(3), 450.204(A)(1), 450.204(B) and Exhibit 1). The appellant filed this appeal in a timely manner on May 18, 2021. (See 130 CMR 610.015(B) and Ex. 2). Modifications to a PA request are valid grounds for appeal. (See 130 CMR 610.032).

At the appellant's representative's request, the record was left open in order to permit her to submit further documentation into the hearing record and for the MassHealth representative to respond. The appellant's representative submitted the documentation by email on June 16, 2021. (Ex. 5). The MassHealth representative responded to this one June 24, 2021, at which time the hearing record closed. (Ex. 6).

Action Taken by MassHealth

MassHealth modified the appellant's PA request for PCA services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 130 CMR 422.410(A)(3), 450.204(A)(1), and 450.204(B), in determining that the appellant's PA request for PCA services should be modified.

Summary of Evidence

The MassHealth representative, a registered nurse and clinical appeals reviewer, stated the following. The appellant is under the age of 20 and has primary diagnoses of autism, developmental disability, hyperkinesia, ADHD, seizure disorder, cardiac insufficiency, and has received chemotherapy for leukemia in the past. (Ex. 4, pp.7-8). A reevaluation PA request for PCA services was submitted by Northeast Ark, Inc. (the provider) on April 23, 2021 for 16 hours and 45 minutes of day and evening services per week for one year. (Ex. 4, p. 23). On April 30, 2021, MassHealth notified the appellant that it was approving 9 hours and 15 minutes of day and evening PCA services from June 22, 2021 through June 21, 2022. (Ex. 1; Ex. 4, pp. 4-6).

MassHealth made modifications to the time requested for grooming and for passive range of motion (PROM) exercises. (Ex. 1; Ex. 4, pp. 4-6). During the hearing the MassHealth representative restored the time for grooming in its entirety to the requested amount. (See Ex. 4, p. 13).

Regarding PROM exercises, the MassHealth representative stated the following. The provider requested 15 minutes, 2 times per day, 7 days per week (15x2x7) for each of the appellant's legs. (Ex. 4, p. 11). MassHealth modified this time to 0 because the documentation submitted indicated that the requested service did not meet professionally recognized standards of health care. (Ex. 1; Ex. 4, pp. 4-6). The MassHealth representative first wanted to mention that MassHealth approved the time to apply and remove AFOs twice per day. (Ex. 4, p. 19). These are applied to stretch the appellant's tight heel cords. (Id.). PROM exercises are generally for someone who is unable to move their own joints to prevent contractures and not for someone who is ambulatory.

The appellant's representative confirmed the appellant has heel tightness. The appellant's representative stated that the appellant is unable to do any exercises because his cognition does not permit him to be able to perform this activity. The appellant's representative stated that she presented one letter from the appellant's pediatrician and physical therapist. (Ex. 2; Ex. 2A). The letter from the appellant's pediatrician stated that the appellant requires assistance with leg stretching exercises twice per day. (Ex. 2A). The letter from the PT stated the following:

[The appellant] is a [teen] male with a primary diagnosis of spastic equinovarus and a secondary diagnosis of autism spectrum disorder. The appellant is receiving outpatient PT through Northeast Rehabilitation due to his altered gait pattern, decreased range of motion, decreased lower extremity and core strength, and decreased coordination development all impacting his ability for age appropriate gross motor skills and interactions through peer play. I have prescribed him a home exercise program to take place every day which he requires assistance from an adult to complete. He has also been prescribed to wear night splints on both legs which

need to be worn every night and also require assistance to get on and off. Below is a list of the exercises and stretches the appellant requires assistance with as well as donning and doffing his night splints and the time required to complete all components...

Stretching - 10 min -3x60" both ankles -requires hands on assistance to complete passive (completed by adult) dorsiflexion stretching[.]

Exercise -10 minutes –

- Dorsiflexion AROM 3x10 bilateral - requires assistance by an adult to hold theraband and cue for max dorsiflexion[.]
- Bridges – 3x10 -requires assistance by an adult for setup of exercises and provide cues to complete maximum hip extension and have proper form [.]
- Quadruped to Downward facing dog – x10 hold 5" - requires assistance by an adult for set up for exercises and to provide cues to tuck toes and push up in one motion... (Ex. 2A).

The MassHealth representative stated PROM exercises are different from stretching, which requires a trained practitioner. The MassHealth representative believes that the MassHealth case assessor who made the initial determination decided that since this was outside the norm of PROM exercises (normally for someone who is not mobile), which is the reason the ADL was modified and not approved. The MassHealth representative stated that she would have given time for movement of the appellant's foot and ankle both prior to and immediately after placement of the AFOs. The MassHealth representative would be willing to restore time for PROM exercises but 15x2x7 for each leg was excessive. The MassHealth representative stated that 15x2x7 for each leg is the amount of time a bedbound person would receive from PROM exercises.

The MassHealth representative stated that she thought it reasonable based on the evidence to allow some time for PROM exercises, however. The MassHealth representative again emphasized that PROM exercises are not stretching, which should be performed with the oversight of a trained individual such as a PT. The MassHealth representative stated that she was aware that the appellant was receiving physical therapy twice per week. PROM exercises would be in addition to the PT. The MassHealth representative also observed that the PT's note refers to the exercises as AROM or active range of motion and that is very different from PROM exercises. AROM has guidelines and classifies improvements to see if there are thresholds being met. The MassHealth representative stated that she did not see anything here that looks like AROM. She thought that 5x2x7 for each leg was reasonable. Some time for PROM exercises was reasonable and possibly advantageous if it was not overdone.

The MassHealth representative stated again that the PCA was not a trained therapist - they can do passive exercises but not active exercises. The reason for this is that without training a PCA could injure the client.

The Appellant's representative stated that she felt like she would hate to have the appellant lose out on having 15x2x7. The appellant's representative stated that 5 minutes per leg per occurrence may not be enough time. The appellant's representative stated that the appellant was going to the neurologist on the following Tuesday (June 11), and she would be willing to obtain further documentation from him.

For that reason, the record was left open until June 16 for the appellant's representative to submit additional documentation from the neurologist and the MassHealth representative was given until June 24 to respond. The letter from the neurologist stated the following:

[The appellant] ...is currently followed by neurology for autism, seizures, and lower limb spasticity. North East Arc was initially treating [the appellant] with 15 to 20 min twice a day passive treatments, but there has been a suggestion to wean to 5 min a day which does not seem long enough to be beneficial for [the appellant]. We recommend current therapy durations since they have been beneficial to his lower extremity spasticity ... (Ex. 5, p. 3).¹

This submission was then forwarded by email to the MassHealth representative. On June 24, the MassHealth representative responded by stating that she read the documents but would stand by her appraisal at the appeal. (Ex. 6).

Findings of Fact

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

1. The appellant is under the age of 20. (Ex. 4, pp. 7-8).
2. The appellant has primary diagnoses of autism, developmental disability, hyperkinesia, ADHD, seizure disorder, cardiac insufficiency, and has received chemotherapy for leukemia in the past. (Ex. 4, pp. 7-8).
3. A reevaluation PA request for PCA services was submitted by the provider on April 23, 2021 for 16 hours and 45 minutes of day and evening services per week for one year. (Ex. 4, p. 23).
4. On April 30, 2021, MassHealth notified the appellant that it was approving 9 hours and 15 minutes of day and evening PCA services from June 22, 2021 through June 21, 2022. (Ex. 1; Ex. 4, pp. 4-6).
5. MassHealth made modifications to the time requested for grooming and for PROM exercises. (Ex. 1; Ex. 4, pp. 4-6).
6. During the hearing the MassHealth representative restored the time for grooming in its

¹ The submission from appellant's representative also included another letter from the PT. This letter, however, is precisely the same as Ex. 2 and will not be reproduced here.

entirety and the appellant's representative withdrew the appeal with regards to this ADL. (Testimony of the MassHealth representative; Testimony of the appellant's representative).

7. For PROM exercises, the provider requested 15x2x7 for each of the appellant's legs. (Ex. 4, p. 11).
8. MassHealth modified this time to 0 because the documentation submitted indicated that the requested service did not meet professionally recognized standards of health care. (Ex. 1; Ex. 4, pp. 4-6).
9. The time requested for PROM exercises are at the same level as for a person who is completely bedbound. (Testimony of the MassHealth representative).
10. The appellant can ambulate. (Testimony of the MassHealth representative).
11. MassHealth approved time to apply and remove AFOs, which are applied to stretch the appellant's tight heel cords, twice per day. (Ex. 4, p. 19).
12. PROM exercises are generally for someone who is unable to move their own joints to prevent contractures and not for someone who is ambulatory. (Testimony of the MassHealth representative).
13. PROM exercises are different from stretching or AROM, which require a trained practitioner. (Testimony of the MassHealth representative).
14. The MassHealth representative acknowledged that some amount of PROM exercises would be reasonable. (Testimony of the MassHealth representative).
15. Based on the evidence, the MassHealth representative was willing to restore some time for PROM exercises: 5x2x7 for each leg. (Testimony of the MassHealth representative).

Analysis and Conclusions of Law

The MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. (130 CMR 610.051(B)). If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. (*Id.*). During the hearing, the MassHealth representative agreed to restore the time the provider requested for grooming in its entirety. Regarding grooming, the appeal is DISMISSED.

MassHealth does 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. (130 CMR 450.204). A service is considered 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. (130 CMR 450.204(A)).

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(B)).

The regulations define PROM exercises as movement applied to a joint or extremity by another person solely for the purpose of maintaining or improving the distance and direction through which a joint can move. (130 CMR 422.402).

The appellant has not shown, by a preponderance of the evidence, that the time requested for PROM exercises was medically necessary. The MassHealth representative stated in her testimony the amount of time the provider requested, 15x2x7 for each leg, was at the same level as what would be approved for someone who is completely bedbound. The record shows that the appellant is ambulatory. There was no evidence produced showing with sufficient detail why 15x2x7 for each was medically necessary for the appellant.

For that reason, the request for 15x2x7 of PROM exercises for each of the appellant's legs is DENIED.

The record does show that the appellant does have heel cord tightness and spasticity. The record shows that the PCA applies and removes AFOs to address this issue. MassHealth approved time for application and removal of the AFO's. The MassHealth representative conceded that some PROM exercises would likely be beneficial before the AFOs are applied and when they are removed. The MassHealth representative testified that for that reason, she would approve 5x2x7 of PROM exercises for each leg as this would have some benefit in conjunction with the appellant's use of the AFOs. Under the circumstances this appears reasonable, even after consideration of information received from the appellant's medical provider.

For the above stated reasons, the appeal is APPROVED with regards to 5x2x7 of PROM exercises for each leg.

Order for MassHealth

Restore the time for grooming in its entirety as requested. The time for PROM exercises should be partially restored to 5x2x7 for each leg.

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.

Scott Bernard
Hearing Officer
Board of Hearings

cc: Optum MassHealth LTSS