

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved in Part; Denied in Part	Appeal Number:	2154636
Decision Date:	9/09/2021	Hearing Date:	08/06/2021
Hearing Officer:	Kenneth Brodzinski		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, RN



*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 - PCA
Decision Date:	9/09/2021	Hearing Date:	08/06/2021
MassHealth's Rep.:	Donna Burns, RN	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated there under.

Jurisdiction

Through notice dated May 26, 2021, MassHealth modified a request for prior authorization for Personal Care Attendant (PCA) services by denying some of the requested time for service (Exhibit A). Appellant filed this appeal in a timely manner on June 17, 2021 seeking approval for the denied time (see 130 CMR 610.015(B) and Exhibit A). Denial of prior authorization for assistance constitutes valid grounds for appeal (see 130 CMR 610.032).

Action Taken by MassHealth

MassHealth modified a request for prior authorization for PCA services by denying some of the requested time for service.

Issue

The appeal issue is whether MassHealth acted in accordance with the controlling regulations when it modified Appellant's request for prior authorization for PCA services by denying some of the requested time for service.

Summary of Evidence

Both parties appeared by telephone.

MassHealth was represented by a registered nurse who serves as a clinical appeals reviewer who testified that Appellant's PCA provider agency submitted a request for prior authorization to reauthorize Appellant's PCA services for the period running on and between June 14, 2021 and June 13, 2022. The written request was supported by a PCA Evaluation that was signed by a registered nurse evaluator on March 26, 2021 (Exhibit B, pages is 7-19).

According to the evaluation, Appellant is [REDACTED] with a primary diagnosis of cerebral palsy. The request sought 77 hours of day/evening hours and two overnight hours. This represented an increase from the previous year's authorization which approved for 66.5 day/evening hours and two overnight hours.

MassHealth made modifications to three areas of assistance: grooming-other; bladder care and housekeeping. The parties exchanged testimony during the hearing and Appellant's representative indicated that they did not dispute the modification made to grooming-other and MassHealth agreed to restore all time requested for housekeeping. By the end of the hearing, only the modification relative to bladder care remained in dispute.

Bladder Care

The MassHealth representative testified that Appellant's request sought time for assistance with bladder care in two segments. One segment was for 20 minutes, seven times per day, seven days a week for the toileting and the second segment was for 10 minutes, seven times per day, seven days a week relative to special transfers for toileting. When added together the request amounted to 30 minutes, seven times per day, seven days per week for assistance with bladder care. MassHealth approved 25 minutes, seven times per day, seven days per week for assistance with bladder care. The MassHealth representative testified that the time requested was longer than ordinarily required for a person with Appellant's physical needs (130 CMR 422.410(A)(7) and 130 CMR 450.204(A)(1)). The MassHealth representative asked Appellant's representatives to explain/describe the toileting process.

Appellant was represented by her legal guardians (husband and wife) who testified that Appellant first has to be undressed while in her bed. Then a Hoyer lift is used to transfer her from the bed to the bathroom. They testified that Appellant has "a lot of problems" including significant hemorrhoids and concerns with skin breakdown. They testified that because Appellant uses a G-tube for feeding, she experiences frequent diarrhea which is often mixed with blood because of the hemorrhoids. Because of this, skin breakdown is also an issue. In addition to typical toileting and cleanup, they have to use Preparation H for the hemorrhoids and other creams and medicines when any sign of redness or skin

breakdown appears. Appellant's representatives testified that once Appellant's is put into position in the bathroom, there can be considerable time waiting for Appellant to finish completely. Once Appellant's is finished, she has to be transferred with the Hoyer from the bathroom back to bed and dressed again.

The MassHealth representative asked how many times per day this occurred. Appellant's representative stated that they usually do this 3 to 4 times a day, but sometimes more if Appellant has an accident.

Upon questioning, Appellant's representative stated that the 25 minutes, seven times per day, seven days per week was not adequate. The hearing officer questioned Appellant's representatives as to their basis for determining how much time it took for each instance of toileting Appellant. In response, Appellant's representatives testified they knew because they did it. The hearing officer noted that the difference between the request and what MassHealth allowed per incident was only five minutes. The hearing officer explained that he was trying to understand how Appellant's representatives determined the amount of time that was needed per incident of assistance with toileting. Appellant's representatives again repeated that they knew because they participated in the assistance. The hearing officer pressed them further and asked how they knew that five-minutes more than what was allowed would be needed. The hearing officer again asked what the basis was for their knowledge of how many minutes it took to assist with this activity and asked Appellant's representatives if they actually timed it or did they have some other basis on which they were concluding that a certain number of minutes was required. In response, the husband stated that they did not time it and stated "that is ridiculous".

The wife ultimately explained that she knew it took longer than 25 minutes per incident because of the daily care schedule that Appellant is on and sometimes toileting will have them running behind schedule. She described how sometimes beginning toileting at 2:30 in the afternoon ran so long that they were not able to tend to a matter that had to be done by 4:45 in the afternoon. When the hearing officer noted that this constituted an interval of 2 hours and 15 minutes, he questioned Appellant's representatives as to whether they were asserting that it takes this long to toilet Appellant one time. Appellant's representative said yes sometimes it does because sometimes they have to wait for Appellant's to completely finish. When the hearing officer explained that the PCA cannot be compensated for waiting time, but only for time when the PCA is actually rendering hands-on assistance, the husband stated, "that is ridiculous". The wife stated that the PCA is not simply waiting and that during the time for toileting, the PCA would probably be doing other things such as cleaning out the bucket or cleaning the floor, but she was not simply waiting and doing nothing.

Findings of Fact

Based on a preponderance of the evidence, this record supports the following findings:

1. Appellant's PCA provider agency submitted a request for prior authorization to reauthorize Appellant's PCA services for the period running on and between June 14, 2021 and June 13, 2022.
2. The written request was supported by a PCA Evaluation that was signed by a registered nurse evaluator on March 26, 2021 (Exhibit B, pages is 7-19).
3. According to the evaluation, [REDACTED] with a primary diagnosis of cerebral palsy.
4. The request sought 77 hours of day/evening hours and two overnight hours; this represented an increase from the previous year's authorization which approved for 66.5 day/evening hours and two overnight hours.
5. MassHealth made modifications to three areas of assistance: grooming-other; bladder care and housekeeping.
6. The parties exchanged testimony during the hearing and Appellant's representative indicated that they did not dispute the modification made to grooming-other and MassHealth agreed to restore all time requested for housekeeping.
7. By the end of the hearing, only the modification relative to bladder care remained in dispute.
8. Appellant's request sought time for assistance with bladder care in two segments.
9. One segment was for 20 minutes, seven times per day, seven days a week for the toileting and the second segment was for 10 minutes, seven times per day, seven days a week relative to special transfers for toileting.
10. When added together the request amounted to 30 minutes, seven times per day, seven days per week for assistance with bladder care.
11. MassHealth approved 25 minutes, seven times per day, seven days per week for assistance with bladder care.
12. The MassHealth representative testified that the time requested was longer than ordinarily required for a person with Appellant's physical.
13. Appellant was represented by her legal guardians (husband and wife) who testified

that Appellant first has to be undressed while in her bed.

14. Then a Hoyer lift is used to transfer her from the bed to the bathroom.
15. Appellant has "a lot of problems" including significant hemorrhoids and concerns with skin breakdown.
16. Appellant experiences frequent diarrhea which is often mixed with blood because of the hemorrhoids.
17. Skin breakdown is a constant concern.
18. In addition to typical toileting and cleanup, they have to use Preparation H for the hemorrhoids and other creams and medicines when any sign of redness or skin breakdown appears.
19. Once Appellant's is put into position in the bathroom, there can be considerable time waiting for Appellant to finish completely.
20. Once Appellant's is finished, she has to be transferred with the Hoyer from the bathroom back to bed and dressed again.
21. This is usually done 3 to 4 times a day, but sometimes more if Appellant has an accident.

Analysis and Conclusions of Law

The party appealing an administrative decision bears the burden of demonstrating the decision's invalidity (*Merisme v. Board of Appeals of Motor Vehicle Liability Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989)).

Appellant has not met her burden of demonstrating that the time MassHealth allowed for assistance with bladder care was incorrect. Appellant's representatives (husband and wife) were not able to credibly state a basis for why this area of assistance required 30 minutes per incident as opposed to the 25 minutes MassHealth allowed. The husband asserted that actually timing the assistance would be "ridiculous", despite the fact that doing so would have served as a credible basis. It was also clear from their testimony that they were including waiting time in their calculation as this was testified to and again the husband claimed it was "ridiculous" not to include waiting time. PCA's can only be compensated for time to "physically" assist with an activity of daily living (ADL's) (such as bladder care) and Instrumental Activities of Daily Living (IADL's). PCAs cannot be compensated for time that does not involve providing physical hands-on assistance such as waiting time (130 CMR 422.410(A)(7) and 130 CMR 422.412(C)).

The wife had testified that each incident of bladder care could take as much as 2.5 hours, yet this doesn't comport with the requested 30 minutes per incident. With regard to the frequency of assistance with bladder care, the wife testified that it was usually 3-4 times a day. Yet a frequency of seven times per day was requested and approved.

If the requested time per incident of 30 minutes had been approved and combined with the upper frequency of four times per day, as reported by the wife, the resulting need would be 30 minutes, 4 times per day, seven days per week = 1050 minutes per week. MassHealth has approved 25 minutes, 7 times per day, seven days per week = 1225 minutes per week. On these facts, Appellant cannot credibly maintain that the amount of time that MassHealth approved for assistance with bladder care is insufficient.

For the foregoing reasons, the appeal is DENIED as to the modification to time to assist with bladder care, but APPROVED as to restoring the full time requested for assistance with housekeeping s agreed to at hearing.

Order for MassHealth

Restore all time for assistance with housekeeping as requested.

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 the Enrollment Center gives you any problems with implementing 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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc: Optum MassHealth LTSS