

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied in part;
Dismissed in part

Appeal Number: 2177490

Decision Date: 12/22/2021

Hearing Date: 11/04/2021

Hearing Officer: Marc Tonaszuck

Appearance for Appellant:
Pro se

Appearance for MassHealth:
Mary Jo Elliott, RN, 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:	Denied in part; Dismissed in part	Issue:	Personal Care Attendant Services
Decision Date:	12/22/2021	Hearing Date:	11/04/2021
MassHealth's Rep.:	Mary Jo Elliott, RN, Optum	Appellant's Rep.:	Pro se
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.

Jurisdiction¹

Through a notice dated 09/12/2021, MassHealth modified the appellant's prior authorization request for personal care attendant (PCA) services from a requested 37:15 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 45:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks to 23:45 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 28:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks (130 CMR 422.410; Exhibit 1). The appellant filed this appeal in a timely manner on 09/28/2021 (130 CMR 610.015(B); Exhibit 2). Modifications of a request for assistance are valid grounds for appeal (130 CMR 610.032).

¹ In MassHealth Eligibility Operations Memo (EOM) 20-09 dated April 7, 2020, MassHealth states the following:

- Regarding Fair Hearings during the COVID-19 outbreak national emergency, and through the end of month in which such national emergency period ends:
 - All appeal hearings will be telephonic; and
 - Individuals will have up to 120 days, instead of the standard 30 days, to request a fair hearing for member eligibility-related concerns.

Action Taken by MassHealth

MassHealth modified appellant's prior authorization request for personal care attendant services.

Issue

The appeal issue is whether MassHealth was correct, pursuant to 130 CMR 422.410 and 450.204, in modifying appellant's prior authorization request for personal care attendant services.

Summary of Evidence

The MassHealth representative testified that she is registered nurse who works for Optum, the MassHealth contractor that makes the personal care attendant (PCA) decisions. She testified that a prior authorization request for PCA services was received on appellant's behalf on 09/13/2021 from her PCA provider, TriValley Elder Services, Inc., and is an initial evaluation request for the dates of service of 09/21/2021 to 09/20/2022. In the prior authorization request for PCA services, the provider requested 37:15 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 45:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks. The appellant is [REDACTED] years of age and she lives with her parents and four siblings. The primary diagnoses affecting her ability to function independently are autism, type 1 diabetes mellitus, developmental delays, immunocompromised, status post removal of spleen, bladder and bowel incontinence and G-tube. In addition, the appellant has been diagnosed with a failure to thrive, a history of many hospital stays, total incontinence and diarrhea 6-8 times per day (Exhibit 4).

The Optum representative testified that MassHealth modified the PCA request to 23:45 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 28:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks. Modifications were made to the request for PCA services that include modifications in the activity of daily living (ADL) tasks of outside mobility (assistance with stairs), oral care, and eating. Modifications were also made in the instrumental activities of daily living (IADL) tasks of assistance with laundry, assistance during transportation to medical appointments and G-tube attachment and feeding (Exhibits 1 and 4).

Mobility (Assistance with Stairs)

The appellant's PCA provider requested 7 minutes, 7 times per day, 2 times per week (7 X 7 X 2)² for weekends and 3 X 6 X 5 for weekdays for assistance with stairs. The provider

² PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

noted that the appellant is able to ambulate in the home with supervision. The bedroom is on the second floor. She needs assistance with stairs.

MassHealth modified the request for assistance with stairs to 3 X 6 X 2 for weekends, 3 X 4 X 5 for weekdays and 3 X 6 X 7 for vacation days. The MassHealth representative testified that the time requested was excessive based on the appellant's documented needs.

The appellant's mother testified on behalf of the minor appellant. She stated that the appellant needs 1 to 1 assistance 100% of the time to go up and down stairs. Seven minutes is not enough. She is unstable and is a fall hazard. She walks on her toes. She also needs assistance to and from the van to go to school. The mother agreed that 7 X 5 X 2 for weekends and 3 X 6 X 5 for weekdays for assistance up and down the stairs is adequate.

Oral Care

The appellant's provider requested 5 X 2 X 7 for assistance with oral care. The provider noted that the appellant is dependent for oral care. MassHealth modified the request for assistance with oral care to 3 X 2 X 7. The MassHealth representative testified that the time requested is excessive to assist the appellant with oral care. After hearing testimony from the appellant's mother, MassHealth restored all time requested in this area.

Eating

The appellant's provider requested 910 minutes per week for assistance with eating.³ The provider noted that the appellant is dependent for spoon and drink feeding by mouth. She has a history of failure to thrive. She cannot feed herself. She was previously G-tube fed. She has progressed to being spoon fed during the day. She still requires nighttime G-tube feeding to increase her calories. She has oral aversion and feeding can be challenging. Meals and snacks take increased time. Meals 40 minutes each and snacks 30 minutes each. She is fed regular textured food at meals and baby food pouches for snacks. She is fed lunch and snack at school.

MassHealth modified the request for assistance with eating to 20 minutes for meals and 5 minutes for a snack. The MassHealth representative testified that the time requested is in excess of the appellant's documented needs.

The appellant's mother testified that the appellant eats breakfast, lunch and dinner and 3 snacks a day. Each meal takes 40 minutes, often more.

Laundry

³ It is difficult to understand the PCA provider's request in this area. The provider noted the appellant needs 40 X 16 X 1 and 30 X 9 X 1. It appears that the provider requests 40 minutes for two meals per day and 30 minutes for two meals a day.

The appellant's provider requested 60 minutes per week for assistance with laundry. MassHealth modified the request to 30 minutes per week. After hearing the mother's testimony, MassHealth restored the time, as requested.

Transportation to Medical Appointments

The appellant's provider requested 43 minutes per week for assistance with transportation to medical appointments. MassHealth modified the request to 29 minutes per week. After hearing the mother's testimony, MassHealth restored the time, as requested.

G-tube Attachment and Starting

The appellant's provider requested 10 X 1 X 7 for assistance with the G-tube feeding. The provider noted that the appellant requires overnight feeding from 7:00 pm to 7:00 am. Time requested is to set up tube feeding each evening and taper down in the morning from 6:00 am until G-tube is removed at 7:00 am.

MassHealth denied the time for assistance with the G-tube. The MassHealth representative testified that this task is outside the scope of a PCA. It is important that this is set up correctly to avoid reflux. A PCA cannot assist with this task.

The appellant's mother asked whether a skilled nurse can perform this task. The MassHealth representative referred the appellant to the PCA provider.

Findings of Fact

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

1. MassHealth received a prior authorization request for PCA services on appellant's behalf on 09/13/2021 from her PCA provider, TriValley Elder Services, Inc. and is an initial evaluation request for the dates of service of 09/21/2021 to 09/20/2022 (Testimony; Exhibit 4).
2. In the prior authorization request for PCA services, the provider requested 37:15 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 45:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks (Testimony; Exhibit 4).
3. The appellant is [REDACTED] years of age and she lives with her parents and four siblings. The primary diagnoses affecting her ability to function independently are autism, type 1 diabetes mellitus, developmental delays, immunocompromised, status post removal of spleen, bladder and bowel incontinence and G-tube. In addition, the appellant has been diagnosed with a failure to thrive, a history of many hospital

stays, total incontinence and diarrhea 6-8 times per day (Testimony; Exhibit 4).

4. MassHealth modified the PCA request to 23:45 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 28:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks (Testimony; Exhibits 1 and 4).
5. The appellant's PCA provider requested 7 minutes, 7 times per day, 2 times per week (7 X 7 X 2)⁴ for weekends and 3 X 6 X 5 for weekdays for assistance with stairs. The provider noted that the appellant is able to ambulate in the home with supervision. The bedroom is on the second floor. She needs assistance with stairs. (Testimony; Exhibits 1 and 4).
6. MassHealth modified the request for assistance with stairs to 3 X 6 X 2 for weekends, 3 X 4 X 5 for weekdays and 3 X 6 X 7 for vacation days (Testimony; Exhibits 1 and 4).
7. The appellant's provider requested 5 X 2 X 7 for assistance with oral care. The provider noted that the appellant is dependent for oral care. MassHealth modified the request for assistance with oral care to 3 X 2 X 7. The MassHealth representative testified that the time requested is excessive to assist the appellant with oral care. After hearing testimony from the appellant's mother, MassHealth restored all time requested in this area (Testimony; Exhibit 4).
8. The appellant's provider requested 910 minutes per week for assistance with eating. The provider noted that the appellant is dependent for spoon and drink feeding by mouth. She has a history of failure to thrive. She cannot feed herself. She was previously G-tube fed. She has progressed to being spoon fed during the day. She still requires nighttime G-tube feeding to increase her calories. She has oral aversion and feeding can be challenging. Meals and snacks take increased time. Meals 40 minutes each and snacks 30 minutes each. She is fed regular textured food at meals and baby food pouches for snacks. She is fed lunch and snack at school (Testimony; Exhibit 4).
9. MassHealth modified the request for assistance with eating to 20 minutes for meals and 5 minutes for a snack. (Testimony; Exhibits 1 and 4).
10. The appellant's provider requested 60 minutes per week for assistance with laundry. MassHealth modified the request to 30 minutes per week. After hearing the mother's testimony, MassHealth restored the time, as requested (Testimony; Exhibit 4).
11. The appellant's provider requested 43 minutes per week for assistance with

⁴ PCA time designated in this manner, (i.e., 20 X 1 X 7) means 20 minutes, 1 time per day, 7 times per week.

transportation to medical appointments. MassHealth modified the request to 29 minutes per week. After hearing the mother's testimony, MassHealth restored the time, as requested (Testimony; Exhibits 1 and 4).

12. The appellant's provider requested 10 X 1 X 7 for assistance with the G-tube feeding. The provider noted that the appellant requires overnight feeding from 7:00 pm to 7:00 am. Time requested is to set up tube feeding each evening and taper down in the morning from 6:00 am until G-tube is removed at 7:00 am (Testimony; Exhibit 4).

13. MassHealth denied PCA time for assistance with G-tube feeding setup (Testimony; Exhibits 1 and 4).

14. Setting up a G-tube is beyond the scope of PCA responsibilities (Testimony).

Analysis and Conclusions of Law

Regulations at 130 CMR 450.204 described medical necessity, as follows:

The MassHealth agency will 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.

(A) 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 (emphasis added).

Regulations at 130 CMR 422.412 describe non-covered PCA services:

MassHealth does not cover any of the following as part of the PCA program or the transitional living program:

- (A) social services, including, but not limited to, babysitting, respite care, vocational rehabilitation, sheltered workshop, educational services, recreational services, advocacy, and liaison services with other agencies;
- (B) medical services available from other MassHealth providers, such as physician, pharmacy, or community health center services;
- (C) assistance provided in the form of cueing, prompting, supervision, guiding, or coaching;
- (D) PCA services provided to a member while the member is a resident of a nursing facility or other inpatient facility;
- (E) PCA services provided to a member during the time a member is participating in a community program funded by MassHealth including, but not limited to, day habilitation, adult day health, adult foster care, or group adult foster care;
- (F) services provided by family members, as defined in 130 CMR 422.402; or
- (G) surrogates, as defined in 130 CMR 422.402.

To qualify for services under the PCA program, the member must meet the conditions defined at 130 CMR 422.403, below:

(C) 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 (emphasis added).

The type of PCA services available are described in 130 CMR 422.410 below:

(A) Activities of Daily Living (ADLs). Activities of daily living include the following:

- (1) mobility: physically assisting a member who has a mobility impairment that prevents unassisted transferring, walking, or use of prescribed durable medical equipment;
- (2) assistance with medications or other health-related needs: physically assisting a member to take medications prescribed by a physician that otherwise would be self-administered;
- (3) bathing/grooming: physically assisting a member with basic care such as bathing, personal hygiene, and grooming skills;
- (4) dressing or undressing: physically assisting a member to dress or undress;
- (5) passive range-of-motion exercises: physically assisting a member to perform range-of motion exercises;
- (6) eating: physically assisting a member to eat. This can include assistance with tube-feeding and special nutritional and dietary needs; and
- (7) toileting: physically assisting a member with bowel and bladder needs.

(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.

(C) Determining the Number of Hours of Physical Assistance. In determining the number of hours of physical assistance that a member requires under 130 CMR 422.410(B) for IADLs, the personal care 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 personal care 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.

The appellant has the burden "to demonstrate the invalidity of the administrative determination." See *Andrews vs. Division of Medical Assistance*, 68 Mass. App. Ct. 228. Moreover, the burden is on the appealing party to demonstrate the invalidity of the administrative determination. See *Fisch v. Board of Registration in Med.*, 437 Mass. 128, 131 (2002); *Faith Assembly of God of S. Dennis & Hyannis, Inc. v. State Bldg. Code Commn.*, 11 Mass. App. Ct. 333 , 334 (1981); *Haverhill Mun. Hosp. v. Commissioner of the Div. of Med. Assistance*, 45 Mass. App. Ct. 386 , 390 (1998).

MassHealth received a prior authorization request for PCA services on appellant's behalf on 09/13/2021 from her PCA provider, TriValley Elder Services, Inc. and is an initial evaluation request for the dates of service of 09/21/2021 to 09/20/2022. In the prior authorization request for PCA services, the provider requested 37:15 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 45:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks. The appellant is [REDACTED] years of age and she lives with her parents and four siblings. The primary diagnoses affecting her ability to function independently are autism, type 1 diabetes mellitus, developmental delays, immunocompromised, status post removal of spleen, bladder and bowel incontinence and G-tube. In addition, the appellant has been diagnosed with a failure to thrive, a history of many hospital stays, total incontinence and diarrhea 6-8 times per day. MassHealth modified the PCA request to 23:45 day/evening hours per week plus 2 daily night time attendant hours for school weeks and 28:15 day/evening hours per week plus 2 daily night time attendant hours for vacation weeks. In the areas of oral care, assistance with laundry, and transportation to medical appointments, MassHealth restored all time requested as a result of the testimony presented by the appellant's mother. As a result, the appeal is dismissed with regard to the modifications made in those areas.

In the area of mobility, the appellant's PCA provider requested 7 X 7 X 2 for weekends and 3 X 6 X 5 for weekdays for assistance with stairs. The provider noted that the appellant is able to ambulate in the home with supervision. The bedroom is on the second floor. She needs assistance with stairs. MassHealth modified the request for assistance with stairs to 3 X 6 X 2 for weekends, 3 X 4 X 5 for weekdays and 3 X 6 X 7 for vacation days. MassHealth based its modifications on the documentation included with the prior authorization request and a determination that the request is not medically necessary to the extent it exceeds the modified time approved. The appellant's mother testified that the appellant needs the requested time of assistance in this task; however, she was not able to state the exact amount of time the appellant needs. As a result, the appellant's representative was unable to meet her burden of showing MassHealth's modification is not correct. This portion of the appeal is therefore denied.

In the area of assistance with eating, the appellant's provider requested 910 minutes per week. The provider noted that the appellant is dependent for spoon and drink feeding by mouth. She has a history of failure to thrive. She cannot feed herself. She was previously G-tube fed. She has progressed to being spoon fed during the day. She still requires nighttime G-tube feeding to increase her calories. She has oral aversion and feeding can

be challenging. Meals and snacks take increased time. Meals 40 minutes each and snacks 30 minutes each. She is fed regular textured food at meals and baby food pouches for snacks. She is fed lunch and snack at school. MassHealth modified the request for assistance with eating to 20 minutes for meals and 5 minutes for a snack, testifying that the requested time is in excess of medically necessary time for assistance. The appellant's mother testified that the appellant needs at least 40 minutes for assistance with eating, and often more. However, the appellant's representative was unable to meet her burden of showing that MassHealth's modification is incorrect. There was no specific testimony of why it takes a PCA more than 20 minutes of "hands on" assistance from a PCA to assist the appellant with eating. As a result, this portion of the appeal is denied.

In the area of assistance with other healthcare needs, the appellant's provider requested 10 X 1 X 7 for assistance with the G-tube feeding. The provider noted that the appellant requires overnight feeding from 7:00 pm to 7:00 am. Time requested is to set up tube feeding each evening and taper down in the morning from 6:00 am until G-tube is removed at 7:00 am. MassHealth denied PCA time for assistance with G-tube feeding setup. The MassHealth representative, a registered nurse, testified credibly that G-tube setup and feeding is a skilled task that is beyond the scope of an unskilled PCA. Accordingly, this portion of the appeal is denied.

For the foregoing reasons, this appeal is denied in part; dismissed in part.

Order for MassHealth

Restore all time requested time in the areas of oral care, assistance with laundry and transportation to medical appointments. With regard to all other modifications, none.

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.

Marc Tonaszuck
Hearing Officer
Board of Hearings

cc:

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