

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved in part
 Denied in part

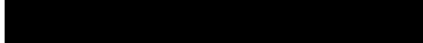
Appeal Numbers: 2177654

Decision Date: 12/16/2021

Hearing Date: 12/08/2021

Hearing Officer: Sara E. McGrath

Appearance for Appellant:



Appearances for MassHealth:

Mary-Jo Elliott, RN



*Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171*

APPEAL DECISION

Appeal Decision:	Approved in part Denied in part	Issue:	Prior Authorization for PCA Services
Decision Date:	12/16/2021	Hearing Date:	12/08/2021
MassHealth Rep:	Mary-Jo Elliott, RN	Appellant's Rep:	
Hearing Location:	Quincy, Harbor Tower South	Aid Pending:	Yes

Authority

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

Jurisdiction

Through notice dated September 21, 2021, MassHealth modified the appellant's request for personal care attendant (PCA) services (130 CMR 422.410; Exhibit 1). The appellant filed a timely appeal on September 5, 2021 (130 CMR 610.015(B)). The hearing was initially scheduled for November 2, 2021, but was rescheduled at the request of the appellant (Exhibit 4). Modification of a request for PCA services is a valid basis for appeal (130 CMR 610.032, 422.417(B)(2)).

Action Taken by MassHealth

MassHealth modified the appellant's request for PCA services.

Issue

The appeal issue is whether the appellant has demonstrated the medical necessity of the services that were modified.

Summary of Evidence

MassHealth was represented at the hearing by a registered nurse who testified by phone. She testified that the appellant is a pre-teen male whose provider, Tempus, Inc., submitted a request for PCA services on his behalf. The appellant, who lives with his family, has diagnoses that include Pallister-Killian syndrome, autism spectrum disorder, and profound intellectual disability (Exhibit 2, p. 8). The appellant is nonverbal and, although very active, has no safety awareness (Exhibit 2, p. 8). MassHealth received a prior authorization re-evaluation request for appellant on September 7, 2021. The appellant seeks PCA services in the amount of 37.75 day/evening hours per week during school weeks, 41.25 day/evening hours per week during vacation weeks, and 14 night hours per week. MassHealth modified the request and authorized 29.75 day/evening hours per week during school weeks, 33.75 day/evening hours per week during vacation weeks, and 14 night hours per week.

The appellant seeks time for assistance with various activities of daily living (ADLs) and instrumental activities of daily living (IADLs). At hearing, the parties were able to resolve many of the disputed areas, including time for assistance with bathing, grooming, dressing, undressing, bladder care, eating, and laundry. The parties were unable to resolve the time for assistance with passive range of motion (PROM) exercises, shopping, and housekeeping.

The appellant requested time for assistance with PROM exercises as follows: 5 minutes, 1 time per day (lower extremities left), and 5 minutes, 1 time per day (lower extremities right) (Exhibit 3, p. 12). The nurse evaluator writes that the surrogate reports that the appellant is seated in a feeding chair, and the exercises are done to the appellant's ankles prior to donning his bilateral ankle braces. The nurse writes that the surrogate requests time because the appellant has hypotonia and his ankles turn inward. The MassHealth nurse testified that time for assistance with this task is typically only authorized to prevent contractures when a member is unable to move his or her own limbs. Here, the record reflects that the appellant is very active and can move his lower extremities independently. Notwithstanding its policy, MassHealth only modified the appellant's request and authorized 5 minutes, 1 time per day, for both lower extremities. MassHealth takes the position that the time requested is longer than ordinarily required for someone with the appellant's physical needs. The appellant's father testified that his son has significant hypotonia in his knees, and wears braces and special shoes. He noted that his son's walk is unstable, and he has a history of falls. He stated that his son's ankle bones are misaligned.

The appellant requested 60 minutes per week for assistance with shopping, and 35 minutes per week for assistance with housekeeping (Exhibit 3, pp. 25-26). MassHealth denied these requests on the basis that parents are responsible for completing IADLs for children under the age of 18. For shopping, the nurse evaluator writes that the surrogate requests time for assistance because it is impossible to take the appellant to the store. The appellant needs to be restrained with one hand at all times, and engages in behaviors like spitting. The appellant's father, who is a single parent, added that he can't hold the appellant anymore, and the appellant refuses to wear a mask. The MassHealth nurse responded and stated that the appellant's request for shopping assistance is akin to a request for babysitting, which is a service not covered under the program.

For housekeeping, the nurse evaluator writes that the surrogate is requesting housekeeping time for the PCA to clean up after the appellant and to sanitize the bedroom and bathroom after incontinence/smearing. The appellant's father added that the appellant spills a lot when eating. The MassHealth nurse responded that time has been authorized for assistance with eating, showering, as well as bladder and bowel care, and that clean up time is included in these authorizations.

Findings of Fact

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

1. The appellant is a pre-teen male who lives with family and has diagnoses that include Pallister-Killian syndrome, autism spectrum disorder, and profound intellectual disability.
2. The appellant is nonverbal and, although very active, has no safety awareness.
3. On September 7, 2021, the appellant submitted a PCA prior authorization re-evaluation request to MassHealth.
4. The appellant seeks PCA services in the amount of 37.75 day/evening hours per week during school weeks, 41.25 day/evening hours per week during vacation weeks, and 14 night hours per week.
5. MassHealth modified the request and authorized 29.75 day/evening hours per week during school weeks, 33.75 day/evening hours per week during vacation weeks, and 14 night hours per week.
6. At hearing, the parties were able to resolve many of the disputed areas, including time for assistance with bathing, grooming, dressing, undressing, bladder care, eating, and laundry.
7. The parties were unable to resolve the time for assistance with PROM exercises, shopping, and housekeeping.
8. The appellant requested time for assistance with PROM exercises as follows: 5 minutes, 1 time per day (lower extremities left), and 5 minutes, 1 time per day (lower extremities right); MassHealth modified the appellant's request and authorized 5 minutes, 1 time per day, for both lower extremities.
9. The appellant has hypotonia and exercises are performed to the appellant's ankles prior to donning his bilateral ankle braces.
10. The appellant requested 60 minutes per week for assistance with shopping, and 35 minutes per week for assistance with housekeeping; MassHealth denied these requests in full.

11. The record documents that that the appellant will regularly put his hand down his diaper after a bowel movement and will smear feces on his body, on the walls, on the floors, and on the rugs.

Analysis and Conclusions of Law

Regulations concerning PCA Services are found at 130 CMR 422.000, et seq. PCA services are physical assistance with ADLs and IADLs, as described in 130 CMR 422.410. Pursuant to 130 CMR 422.403(C), MassHealth covers PCA services when (1) they 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 ADLs as defined in 130 CMR 422.410(A); and (4) MassHealth has determined that the PCA services are medically necessary.

ADLs and IADLs are addressed in 130 CMR 422.410, which provides as follows:

(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 or 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 MassHealth as being instrumental to the health care of the member.

(C) 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) MassHealth will consider individual circumstances when determining the number of hours of physical assistance that a member requires for IADLs.

As set forth above, MassHealth modified and/or denied the time requested for assistance with PROM exercises, shopping, and housekeeping. After considering the evidence in the record, I find that the appellant has demonstrated the necessity for additional PCA assistance with one of these activities.

MassHealth modified the time requested for assistance with PROM ankle exercises on the basis that

time is generally not allowed if a member can independently move his or her limbs. Here, the record confirms that the appellant is very active, ambulates independently, and can move his legs and ankles without assistance. Nevertheless, MassHealth authorized 5 minutes per day for the PCA to exercise the appellant's ankles before putting on his ankle braces. In light of MassHealth's policy, this authorization seems reasonable, and neither the record nor testimony at hearing provides support for authorizing any additional time for assistance with this task. This part of the appeal is denied.

MassHealth denied the time for assistance with shopping and housekeeping because a child would not be responsible for shopping and housekeeping under any ordinary circumstances; rather, this would be parental responsibility. Under part (C)(1) above, when a member is living with family members, the family members provide assistance with most IADLs, including "routine laundry, housekeeping, shopping, and meal preparation and clean-up should include those needs of the member." In this case, the evidence suggests that the appellant's shopping needs are routine, and that the need for shopping assistance has to do with difficulties around taking the appellant to the store. Thus, whether the father shops and the PCA stays home with the appellant, or vice versa, the request is essentially a request for babysitting, a service not covered under the program (130 CMR 422.412(A)). This part of the appeal is denied.

For housekeeping, however, the evidence suggests that the appellant's needs go beyond what would be considered "routine." The record documents that the appellant regularly smears feces on the walls, floors, and rugs in multiple rooms in the home, the cleaning of which would involve a regimen that would be far more time-consuming than what is needed in a typical household (Exhibit 3). I therefore find a basis to approve the time requested for housekeeping. This part of the appeal is approved.

The appeal is approved in part and denied in part.

Order for MassHealth

Stop aid pending, and approve the request for PCA time for assistance with housekeeping.

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 hereon, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, at the address on the first page of this decision.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc: Optum