

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved-in-part; Dismissed-in-part	Appeal Number:	2177875
Decision Date:	01/10/2022	Hearing Date:	11/19/2021
Hearing Officer:	Casey Groff		

Appearance for Appellant:



Appearance for MassHealth:

Donna Burns, R.N., Optum/MassHealth



*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 Services
Decision Date:	01/10/2022	Hearing Date:	11/19/2021
MassHealth's Rep.:	Donna Burns, R.N.	Appellant's Rep.:	██████r
Hearing Location:	Remote	Aid Pending:	Yes

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 September 23, 2021, MassHealth informed Appellant, a minor, that it was modifying his request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 2. Appellant's mother filed a timely appeal on behalf of Appellant on October 11, 2021. See 130 CMR 610.015(B); Exhibit 1. Modification of a prior authorization request for PCA services is a valid basis for appeal. See 130 CMR 610.032.

Action Taken by MassHealth

MassHealth modified Appellant's request for PCA services.

Issue

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

Summary of Evidence

At the hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by his mother. All parties appeared by telephone.

Through testimony and documentary evidence, the MassHealth R.N. representative presented the following information: Appellant is a minor, under the age of 18. He has a primary diagnosis of autism with developmental delay, as well as diagnoses of ADHD and seizure disorder. See Exh. 4, p. 9. On September 9, 2021, following a re-evaluation by Appellant's personal care management (PCM) agency, MassHealth received a prior authorization (PA) request on behalf of Appellant for personal care attendant (PCA) services from October 24, 2021 through October 23, 2022. The PA request sought approval for 21 hours and 30 minutes of day/evening PCA services and two hours per night (14 hours per week) of nighttime PCA services.

Through a letter dated September 23, 2021, MassHealth notified Appellant that it modified his PA request by approving 17 day/evening hours per week. See Exh. 2. MassHealth approved the requested nighttime hours in full. Id. For the day/evening services, MassHealth made modifications to the time and/or frequency requested for the following seven activities of daily living (ADLs): (1) mobility; (2) hair wash; (3) nail care; (4) hair combing; (5) oral care; (6) deodorant/lotion application; and (7) eating. Id.

At the hearing, the parties resolved all modifications except the ADL of mobility. Specifically, MassHealth agreed to approve time as requested for hair wash (5x1x7), nail care (12x1x1); and oral care (5x2x7). The parties came to an agreed-upon time for deodorant and lotion application at 8 minutes per day (which was an increase to MassHealth's initial modification of 2 minutes daily). Appellant accepted the modification made to hair combing (1x1x7). For eating, MassHealth agreed to restore the requested time for breakfast and dinner (15x2x7) and Appellant accepted MassHealth's modification to lunch (10x1x5).

For the unresolved modification of mobility, Appellant requested PCA assistance at five minutes per day, two days per week, seven days per week (5x2x7). This was based on Appellant being "dependent" in transfers from his house to the school van, including his need for assistance applying and removing safety belt, and holding his backpack as Appellant "will just drop or leave" it. See Exh. 4, pp. 11-12. MassHealth did not take issue with the requested five minutes per episode; however, modified the weekly frequency to only his five school days per week (5x2x5) and did not include mobility time for weekend days. See Exh. 2.

Appellant's mother appeared at the hearing by telephone. Based on the mother's testimony and documentation in the PA request, the following evidence was presented: As Appellant has gotten older and stronger, he requires more assistance in all aspects of care, including prevention from "bolting" which is a frequent occurrence. In the present PA period, MassHealth reduced his PCA hours, even though his condition has not changed. Rather, he requires more assistance now that he gotten older and stronger. The PA request indicates that Appellant is 72 inches (6 ft) and 155 pounds. See Exh. 4, p. 9. He is in "continuous motion, easily distracted, needs to be brought back to task, has poor safety awareness, and becomes easily frustrated especially during morning PCA care." Id. at 9. In addition to his five school days, Appellant requires the same

assistance with mobility during weekend days. Every Saturday, Appellant is picked up by a skills trainer¹ and each Sunday he is picked up by a babysitter. Appellant's mother who is a nurse, works full time, including weekends, and relies on the PCA to safely transfer him into the car of the skills trainer/babysitter, and safely bring him back into the house in the afternoon. Appellant stated that her son is, and has always been, a "bolter." They live in a very dangerous street with lots of traffic. Appellant requires hands-on contact whenever outside the house, so he does not bolt and run off. Typically, two people are needed to assist in the transition given that Appellant has become so strong. Thus, the skills trainer or babysitter will usually help the PCA bring Appellant from the house to the car and vice-versa. Appellant's mother testified that his tendency to bolt occurs so often that they must have gates and locks on everything so that he cannot escape. It is medically necessary and a significant safety concern to have the PCA provide hands on assistance in this respect.

Findings of Fact

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

1. Appellant is a minor, under the age of 18.
2. He has a primary diagnosis of autism with developmental delay, as well as diagnoses of ADHD and seizure disorder.
3. On September 9, 2021, following a re-evaluation by Appellant's personal care management (PCM) agency, MassHealth received a prior authorization (PA) request on behalf of Appellant for personal care attendant (PCA) services.
4. The PA request sought approval for 21 hours and 30 minutes of day/evening PCA services and two hours per night (14 hours per week) of nighttime PCA services starting October 24, 2021 through October 23, 2022.
5. Through a letter dated September 23, 2021, MassHealth notified Appellant that it modified his PA request by approving 17 day/evening hours per week.
6. MassHealth approved the requested nighttime hours in full.
7. For the day/evening PCA services, MassHealth made modifications to the time and/or frequency requested for the following seven activities of daily living (ADLs): (1) mobility; (2) hair wash; (3) nail care; (4) hair combing; (5) oral care; (6) deodorant/lotion application; and (7) eating.
8. For mobility, Appellant requested PCA assistance at five minutes per day, two days per

¹ Appellant's mother explained that the skills trainer takes Appellant out into the community and helps him interact socially, for example, handing the card to the cashier for a food purchase.

week, seven days per week (5x2x7).

9. MassHealth modified the weekly frequency to his five school days per week only (5x2x5) to account for assistance from the house to school van and vice versa at drop-off.
10. MassHealth did not allow any mobility time for weekend days.
11. Appellant is 72 inches (6 ft) and 155 pounds.
12. He is in “continuous motion, easily distracted, needs to be brought back to task, has poor safety awareness, and becomes easily frustrated especially during morning PCA care.”
13. On Saturdays, Appellant is picked up by a skills trainer² and on Sunday’s he is picked up by a babysitter.
14. Because Appellant’s mother works full-time including weekends, she relies on the PCA to safely transfer Appellant into the car, and then safely bring him back into the house in the afternoon on weekend days.
15. Appellant has the frequent tendency to “bolt” or run off, when outside of the house.
16. Appellant lives on a busy street and requires hands-on contact, ideally by two people, whenever outside the house so he does not bolt and run off.
17. At hearing, the parties resolved the remaining six modifications, as follows: MassHealth agreed to approve time as requested for hair wash (5x1x7), nail care (12x1x1); and oral care (5x2x7); the parties came to an agreed-upon time for deodorant and lotion application at 8 minutes per day (which was an increase to MassHealth’s initial modification of 2 minutes daily); Appellant accepted the modification made to hair combing (1x1x7); For eating, MassHealth agreed to restore the requested time for breakfast and dinner (15x2x7) and Appellant accepted MassHealth’s modification to lunch (10x1x5).

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:³ First, the

² Appellant’s mother explained that the skills trainer takes Appellant out into the community and helps him interact socially, for example, handing the card to the cashier for a food purchase.

³ 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.”

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).

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 the pre-requisites to qualify for PCA services. This appeal addresses whether MassHealth allotted sufficient time, in accordance with program regulations, for Appellant to receive assistance with his activities of daily living (ADLs) to meet his health care needs. MassHealth regulations provide the following regarding the scope of ADLs within the PCA program:

(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;

See 130 CMR 422.002.

(3) bathing or grooming: physically assisting a member with bathing, personal hygiene, or grooming;

(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.

See 130 CMR 422.410.

MassHealth will reimburse for the “activity time performed by a PCA in providing assistance with the ADL.” 130 CMR 422.411. MassHealth does not, however, pay for “assistance provided in the form of cueing, prompting, supervision, guiding, or coaching.” 130 CMR 422.412(C).

Based on the evidence presented at hearing, Appellant has sufficiently demonstrated that he requires the requested time for a PCA to provide mobility assistance taking him to and from the car to his house on weekends (5x2x7). Although MassHealth approved PCA assistance for mobility assistance to and from the school van on weekdays (5x2x5), it denied the time for mobility assistance of weekends; specifically walking Appellant to and from the babysitter/skill trainer car. See Exh. 2. Appellant has diagnoses of autism with developmental delay and ADHD. Both Appellant’s mother and documentation in the PA request indicated that Appellant is a “bolter,” he is in “continuous motion, easily distracted, needs to be brought back to task, [and] has poor safety awareness.” Exh. 4, p. 9. He is often resistant to care. Id. Appellant’s mother, a nurse, works during the weekend and relies on the PCA to assist in safely transitioning Appellant to the skills trainer on Saturdays and babysitter on Sundays. Now, at six feet tall and 155 pounds, Appellant is much more capable of bolting and escaping when outside. According, the transfer process is a two-person job and requires hands-on contact to keep Appellant from running. Appellant’s mother persuasively demonstrated that she cannot leave the responsibility alone to the skills trainer or babysitter. They live on a dangerous street that is very busy with lots of traffic. As a result, Appellant’s family has taken steps to put gates up and locks everywhere so that he cannot escape. Given that Appellant’s poor safety awareness and “bolting” tendencies have increased with age, that Appellant lives on a busy street, and that Appellant’s mother is not available on weekends to assist in this two-person job, weekend PCA assistance with this task is medically necessary.

The appeal is APPROVED-in-part insofar as Appellant demonstrated medical necessity for PCA assistance with mobility in the amount/frequency of 5x2x7, reflecting time on both school days (as already approved) and weekend days.

The appeal is DISMISSED-in-part insofar as the parties agreed at hearing to the time/frequency

for the remaining modifications as follows:

- Hair wash at 5x1x7 (as requested)
- Nail care at 12x1x1 (as requested)
- Oral care at 5x2x7 (as requested)
- Deodorant/lotion application 8x1x7 (as agreed upon at hearing)
- Hair combing 1x1x7 (as accepted by Appellant)
- Eating: Breakfast and Dinner: 15x2x7 (as requested); Lunch 10x1x5 (as accepted by Appellant)

Order for MassHealth

Remove aid pending. For the PA period beginning October 24, 2021 through October 23, 2022, approve the requested time for PCA assistance with mobility to 5x2x7.

In accordance with the agreements made by the parties at hearing, implement the following: hair wash at 5x1x7; nail care at 12x1x1; oral care at 5x2x7 as requested; deodorant/lotion application 8x1x7; hair combing at 1x1x7; eating at 15x2x7 (breakfast/dinner) and 10x1x5 (lunch)

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

cc:

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