

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Approved-in-part;
Dismissed-in-part

Appeal Number: 2178767

Decision Date: 02/02/2022

Hearing Date: 01/06/2022

Hearing Officer: Casey Groff

Appearance for Appellant:



Appearance for MassHealth:

Mary Jo Elliot, R.N., Clinical Appeals
Reviewer



*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:		Hearing Date:	01/06/2022
MassHealth's Rep.:	Mary Jo Elliot, R.N.	Appellant's Rep.:	██████
Hearing Location:	Board of Hearings (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 October 21, 2021, MassHealth informed Appellant, a minor, that it was modifying her request for personal care attendant (PCA) services. See 130 CMR 450.204.(A)(1) and Exhibit 1. Appellant's mother filed a timely appeal on behalf of Appellant on November 17, 2021. See 130 CMR 610.015(B) and 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 hearing, MassHealth was represented by a registered nurse/clinical appeals reviewer. Appellant was represented by her 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. Her diagnoses include autism, global developmental delay, pica, increased aggressive and resistive behavior, tactile sensory issues, right-handed weakness, and history of wandering. See Exh. 4, p. 9. On September 28, 2021, following a re-evaluation by Appellant's personal care management (PCM) agency, MassHealth received a prior authorization (PA) request on behalf of Appellant seeking personal care attendant (PCA) services for the time period of November 29, 2021 through November 28, 2022. Id. at 3. The PA request sought approval for 26 hours and 15 minutes of day/evening PCA services per-week and 14 hours of nighttime services per-week. Id.

Through a letter dated October 21, 2021, MassHealth notified Appellant that it modified her PA request by approving 20 day/evening hours per week. See Exh. 1. MassHealth approved the requested nighttime hours in full. Id. For the day/evening PCA services, MassHealth made modifications to the time and/or frequency requested for the following activities of daily living (ADLs): (1) Grooming: nail care; (2) Eating; and (3) Toileting: bladder and bowel care.¹ Id.

The parties first addressed MassHealth's modification to the time requested for "nail care" which falls under the ADL category of grooming. Appellant's PCM agency requested 10 minutes per-week (10x1) for assistance with nail care. See Exh. 4 at 14. According to the PCM agency's submission, Appellant is dependent for all grooming activities due to her inability to initiate, follow, or complete a task; her lack of safety awareness; resistance to care; and tactile sensory issues. Id. MassHealth did not approve any time for assistance with nail care because a child at Appellant's age is not reasonably expected to trim nails on their own, and therefore it is considered a parental responsibility.

Appellant's mother disputed the modification and testified that the process of nail care takes significantly longer than one would reasonably expect for a child of Appellant's age. Although she understands it is a parental responsibility, the process is a two-person job that she shares with the PCA: one to file the nails and one to sit Appellant down, calm her, distract her, or keep her from hitting. Both roles are hands-on. As Appellant has gotten older and stronger, all caregiving tasks take more time due to her resistant and combative behavior. Appellant's mother explained that the PCA files Appellant's nails (rather than cut her nails) due to her auditory and tactile sensitivities and this takes more time. Additionally, because of her sensitivities and resistance to care, they are unable to trim her nails in one sitting. It is a process that they constantly must start, stop, and come back when she is settled.

Next the parties addressed MassHealth's modification to "Eating." For this ADL, Appellant's PCM agency requested fifteen minutes once per-day, seven days per-week (15x1x7), presumably

¹ MassHealth also modified Appellant's request for "overnight toileting" to 10 minutes once per night; however, this modification had no actual effect on Appellant's requested nighttime PCA hours as MassHealth approved the maximum amount of 14 nighttime hours per week. Accordingly, Appellant did not dispute this modification.

for breakfast, and 20 minutes two-times per-day, seven days per-week (20x2x7), presumably for lunch and dinner.² See Exh. 4, p. 17. The PCM agency noted that Appellant requires maximum physical assistance with eating and drinking as she is unable to initiate, follow, or complete a task; requires hand-over-hand assistance at meals; and needs the PCA to ensure adequate food intake. Id. MassHealth modified this request by approving the time for breakfast at 15x1x7; however, it reduced the time for lunch and dinner to 15 minutes per day each, and in addition reduced the frequency of lunch feedings to only the two-weekend days, rather than the requested seven days per-week. Thus, Appellant's request for 20x2x7 was split as follows: 15x1x5 (weekday dinners) and 15x2x2 (dinner/lunch on weekends). See Exh. 1. The MassHealth representative explained that because Appellant attends school, the PCA would not be assisting Appellant with weekday lunches.

In regards from the reduction in time from 20 minutes to 15 minutes for dinners and weekend lunches, Appellant's mother testified that the process of feeding Appellant is very time consuming and can take up to an hour. In assisting with feeding, her PCA uses constant hand-over-hand assistance to help her get adequate food intake. All aspects of the feeding process are hands-on. Not considering any waiting or supervision time, the hands-on feeding takes at least 20 minutes. Additionally, Appellant's mother challenged MassHealth's elimination of weekday lunches. Because Appellant is considered a choking risk due to her history of pica – a condition that causes her to put non-food items in her mouth – she has an assigned “one-on-one” at school. The one-on-one will present Appellant with her packed lunch at lunchtime, however, is not responsible for feeding her. Therefore, Appellant might eat a snack that she can grab with her hands but lacks the ability to consume anything more. For these reasons, the PCA has lunch waiting for Appellant when she returns from school shortly after 3:00pm. Appellant will not eat sufficient food without constant intervention, hand-to-mouth assistance, and this is not provided at school.

In response, the MassHealth representative agreed to restore the requested time for dinner at 20x1x7; however, stood by the decision to modify lunch at fifteen minutes on weekends only (15x1x2). Therefore, the only remaining “eating” issue in dispute at the conclusion of the hearing, concerned MassHealth's modification to lunch at 15x1x2.

Finally, the parties addressed the modifications made the ADL of Toileting. After MassHealth provided a basis for its decision, Appellant's mother accepted the modifications to bladder care (7x6x2/weekends and 7x4x5/weekdays) and bowel care (10x1x5/weekdays and 10x2x2/weekends).

Findings of Fact

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

² The PCM agency did not clearly identify which of the two-line items were intended for each meal.

1. Appellant is a minor, under the age of 18, and has diagnoses including autism, global developmental delay, pica, increased aggressive and resistive behavior, tactile and auditory sensory issues, right-handed weakness, and history of wandering.
2. On September 28, 2021, Appellant's PCM agency sent MassHealth a PA request on behalf of Appellant seeking 26 hours and 15 minutes of day/evening PCA services per-week and 14 hours of nighttime PCA services per-week from November 29, 2021 through November 28, 2022.
3. Through a letter dated October 21, 2021, MassHealth notified Appellant that it modified her PA request by approving 20 day/evening hours per week, which effected the time/frequencies requested for (1) Grooming/nail care; (2) Eating; and (3) Toileting: bladder and bowel care.
4. Appellant's PCM agency requested 10 minutes per-week (10x1) for assistance with nail care noting that Appellant is dependent for all grooming activities due to her inability to initiate, follow, or complete a task; her lack of safety awareness; resistance to care; and tactile sensory issues.
5. MassHealth did not approve any time for assistance with nail care because it is considered a parental responsibility.
6. Appellant's nails must be filed (not clipped) due to her tactile and auditory sensory issues.
7. As a result of her condition, Appellant requires the assistance of two people to trim her nails and the process cannot be performed in one sitting.
8. For "Eating" Appellant's PCM agency requested 15x1x7 for breakfast and 20x2x7 for lunch and dinner noting that Appellant requires maximum physical assistance with eating and drinking as she is unable to initiate, follow, or complete a task; requires hand-over-hand assistance at meals; and needs the PCA to ensure adequate food intake.
9. MassHealth approved the time requested for breakfast at 15x1x7; but split the request for lunch/dinner by modifying them as follows: 15x1x5 (weekday dinners) and 15x2x2 (dinner/lunch on weekends).
10. At hearing, MassHealth agreed to restore the requested time for dinner, thus approving 20x1x7, leaving the only "eating" issue in dispute its decision to reduce lunchtime feedings to 15 minutes per-day on weekends only (15x1x2) because Appellant attends school during the weekdays.
11. To assist with feeding, Appellant's PCA uses constant hand-over-hand assistance to help her lift food from the plate to mouth and to get adequate food intake.

12. Not considering waiting or supervision time, the assistance with hands-on feeding takes the PCA at least 20 minutes.
13. Appellant's assigned one-on-one at school is responsible for supervising Appellant during mealtimes but does not assist her with the physical process of eating.
14. Because Appellant only is capable of eating snacks at school, Appellant's PCA feeds her lunch when she returns from school shortly after 3:00pm.
15. Appellant will not eat sufficient food without constant intervention and hand-to-mouth assistance.
16. At hearing, Appellant's mother accepted the modifications MassHealth made to bladder care (7x6x2/weekends and 7x4x5/weekdays) and bowel care (10x1x5/weekdays and 10x2x2/weekends).

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 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.

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." See 130 CMR 422.002.

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 her activities of daily living (ADLs) to meet her 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;
- (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 sufficiently demonstrated that 10 minutes per week of PCA assistance with nail care is medically necessary. See 130 CMR 450.204(A). Appellant is dependent for all grooming activities due to her inability to initiate, follow, or

complete a task; her lack of safety awareness; resistance to care; and tactile sensory issues. See Exh. 4, p. 14. However, because Appellant is a minor MassHealth denied any time for this task because it is considered a parental responsibility. At hearing, Appellant's mother credibly testified that she does, in fact, assume this parental responsibility; however, due to her daughter's condition, she requires the assistance of the PCA to complete the task. Specifically, one person will trim her nails while the other helps distract, redirect, or keep Appellant her from hitting. Both roles involve direct hands-on assistance. Additionally, the process of trimming nails takes much longer than ordinarily expected for a caregiver to provide. Due to Appellant's sensitivities, the PCA files her nails, which is a longer process than clipping nails. Finally, this task cannot be performed in one sitting because of Appellant's resistance to care, and thus must be stopped and re-started at various times throughout the week. Because nail care is a two-person task and takes longer than ordinarily expected for a child of Appellant's age, the requested time of 10 minutes per week (10x1) was appropriate based on program regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410(A)(3).

The appeal is APPROVED with respect to nail care.

Additionally, Appellant successfully demonstrated that her request for 20 minutes for lunch seven days per-week is medically necessary. Appellant requires maximum physical assistance with eating and drinking as she is unable to initiate, follow, or complete a task; requires hand-over-hand assistance at meals; and needs the PCA to ensure adequate food intake. See Exh. 4, p. 17. Because Appellant attends school five days per week, MassHealth reduced the frequency for lunches to two-days per week (as opposed to 7-days as requested) and reduced the time per episode to 15 minutes (versus the 20 minutes requested). However, both documentary evidence and testimony demonstrated the feeding Appellant is extremely time consuming and can take up to an hour. Appellant has right-handed weakness limiting her ability to feed herself. Accordingly, the PCA uses hands-on assistance to bring the food from her plate to her mouth. Not accounting for any waiting, queuing, or supervision time, the hands-on assistance alone takes at least 20 minutes. Although Appellant has a one-on-one at school who is responsible for supervising Appellant, this individual does not provide the level of feeding assistance that Appellant requires for adequate food intake. As such, it is necessary for Appellant's PCA to feed her lunch when she returns from school. Such evidence demonstrates that the request for 20 minutes for lunch, seven-days per-week is appropriate and supported by the aforementioned program regulations. See 130 CMR 450.204(A); see also 130 CMR 422.410(A)(6).

For Eating, the appeal is APPROVED-in-part with respect to lunch (20x1x7) and DISMISSED-in-part with respect to dinner as MassHealth agreed to restore the time requested (20x1x7).

For Toileting the appeal is DISMISSED with respect to toileting, as Appellant accepted the modified time/frequencies for bladder care (7x6x2/weekends and 7x4x5/weekdays) and bowel care (10x1x5/weekdays and 10x2x2/weekends).

Order for MassHealth

Remove aid pending. For the PA period beginning November 29, 2021 through November 28, 2022, adjust the time/frequencies for the modified ADLs as follows:

1. Nail Care at 10x1x1 (as approved via this Decision).
2. Eating:
 - Lunch at 20x1x7 (as approved via this Decision)
 - Dinner: 20x1x7 (as MassHealth agreed to restore in full at hearing)
 - Breakfast to remain as-is at 15x1x7 (MassHealth originally approved in full)
3. Toileting modifications to remain in-place as agreed-to by Appellant:
 - a. Bladder care at 7x6x2/weekends and 7x4x5/weekdays; and
 - b. Bowel care at 10x1x5/weekdays and 10x2x2/weekends.

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.

Casey Groff
Hearing Officer

Board of Hearings

cc:

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